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**THE KEY ISSUES CONFRONTING MINOR LEAGUE  
BASEBALL**

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The Key Issues Confronting Minor Le...

**HEARING**  
BEFORE THE  
**COMMITTEE ON SMALL BUSINESS**  
**HOUSE OF REPRESENTATIVES**  
ONE HUNDRED THIRD CONGRESS  
SECOND SESSION

WASHINGTON, DC, JULY 20, 1994

Printed for the use of the Committee on Small Business

**Serial No. 103-95**



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# THE KEY ISSUES CONFRONTING MINOR LEAGUE BASEBALL

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WEDNESDAY, JULY 20, 1994

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The committee met, pursuant to notice, at 10 a.m., in room 2359-A, Rayburn House Office Building, Hon. John J. LaFalce (chairman of the committee) presiding.

Chairman LAFALCE. The Small Business Committee will come to order.

We read a great deal about the problems of major league baseball, of declining public interest, falling revenues, obstinate owners, and overpaid players. In truth, to paraphrase Mark Twain, the reports of the demise of baseball in America are "greatly exaggerated." Baseball appears to be well and alive in much the same form that it has always existed in minor league ball parks across the Nation.

While most professional sports in America can be aptly described as big business, an important small business segment continues to flourish in baseball's minor leagues. Minor league teams are found in more than 170 cities and towns across America. For most of these communities, minor league teams represent a valuable source of local revenue and public entertainment. Minor league teams generally play in small stadiums, are run by small business people, and operate with few full-time staff and limited budgets.

Many minor league teams have emerged as examples of small business "all stars," overcoming adverse market and economic conditions with innovative marketing and management initiatives. Despite growing competition from other professional sports, rising costs, popular dissatisfaction with major league baseball, and a changing, often troubled relationship with their major league teams, many minor league teams are flourishing. More than 30 million people attended minor league games in 1993, double the attendance figures of 10 years ago.

But there is concern that the increasing legal and financial controversies of major league baseball may adversely affect minor league team operations. The legal and financial relationship between major league and minor league baseball teams has changed significantly in recent years, with new controls and greater financial obligations imposed on minor league team owners. Revenues available to major league teams from television contracts and other sources to support minor league operations have been declining. Congress is considering possible repeal of the 70-year-old antitrust

exemption for major league baseball, and a prolonged strike by major league baseball players appears an unfortunate but likely possibility.

A major uncertainty for many minor league teams is the potential impact on the minor leagues of any congressional repeal or alteration of baseball's antitrust exemption. While many of the arguments on both sides of the issue of repeal appear more emotional than legal, a very real concern is raised by the argument that repeal could have devastating consequences for minor league baseball. But the exact nature and source of these consequences remain unclear.

At the heart of the antitrust exemption issue and a key feature of the major league/minor league relationship is baseball's player reserve system. Under the reserve system, players are allocated to specific major league teams by means of the amateur draft. Each team reserves an exclusive right to negotiate with and control players in their minor league structure for a period of up to 7 years. If a player advances to the major leagues, this control may extend over a longer period before the player has the right to negotiate with another team. This long-term control of players enables major league teams to restrict player salary costs and to make large numbers of talented players available at the minor league level. However, if the antitrust exemption were to be repealed, the amateur draft and standard players reserve clause contract could become subject to antitrust suits by players which, if successful, could disrupt baseball's player control structure that provides players and financial support to minor league teams.

Similar issues relating to control of players and players' salaries are at the center of current negotiations between major league owners and players that could bring a major league players strike this summer.

The purpose of today's hearing is to highlight minor league baseball teams as important small businesses, to investigate the relationships between major league and minor league teams, and to assess the potential impact of key legal and financial issues on minor league team operations. In particular, our committee has sought testimony from varying perspectives on the likely impact on the minor leagues of congressional repeal of baseball's antitrust exemption, of growing labor problems and a possible strike by major league players, of possible renegotiation of the legal relationship between major league and minor league teams, and related issues.

Minor league baseball teams are very important American institutions and excellent examples of creative, entrepreneurial small businesses. We are pleased to have with us today a very capable panel of witnesses with divergent viewpoints to discuss the key issues confronting minor league teams and the future of minor league baseball.

I would now call on our Ranking Minority Member, Mrs. Meyers for any opening statement she might have.

[Chairman LaFalce's statement may be found in the appendix.]

Mrs. MEYERS. Well, Mr. Chairman, I have got to say I really—I had never connected minor league baseball with small business, but I am sure that there is a connection. I grew up watching the Nebraska Independent League in Superior, Nebraska. I don't think



that was a minor league; it was—but it was wonderful baseball; and I was a real groupie, and we followed that team from town to town, and I am a lifelong baseball fan.

I look forward to today's hearing, and I appreciate the distinguished panel of witnesses who are appearing before us today. I look forward to learning more about the legal and financial issues involved in keeping professional baseball healthy—and play ball.

Chairman LAFALCE. The first batter is Representative Sherwood Boehlert, our colleague from western New York.

Mr. KNOLLENBERG. Mr. Chairman, could I just make a very, very brief statement.

Chairman LAFALCE. Oh, I am sorry. Surely, surely, yes.

Mr. KNOLLENBERG. I want to thank you first of all for holding the hearing and I look forward to the testimony forthcoming. For many baseball fans around the country, minor league baseball is the only game in town, a chance to see live professional quality baseball; and I understand that fans are turning out in ever-increasing numbers to attend more games at new stadiums, which is an indication that there is some growth throughout the country, rooting of course for their home team. This is true in cities like Toledo, which happens to be the home of the Mud Hens, which is a team that furnishes some of the folks for the Detroit Tigers, just south of Detroit not too far from my district; New Orleans; and small towns such as Hagerstown where collectively around the country some 45 minor league baseball parks have been built since the mid-1980's. For many people a local baseball team provides civic pride and a common rallying point for the whole community.

Further, the nature of minor league baseball and the relationship with the major leagues makes them unique businesses. With annual revenue and employment levels below many traditional small businesses, minor league baseball teams clearly qualify as small. I am pleased that we are examining this issue in the committee, and paying close attention to how efforts by Congress and the courts go about reforming baseball will change the face of the minor leagues, which is a thriving industry in our Nation's small business sector.

This is an issue of importance to the owners, to the players, to the fans and to the families who still enjoy America's pastime, oftentimes for less than the cost of a theater ticket to a movie. So, with that, I conclude and I thank you again and look forward to the testimony.

Chairman LAFALCE. Thank you very much.

Our first witness, as I said, is going to be Representative Sherwood Boehlert, who chairs the Minor League Baseball Caucus and who is a very avid fan of minor league baseball. Mr. Boehlert may have more minor league teams in his congressional district than any other Member of Congress.

I had three at one time, Buffalo Bisons, Rochester, and Niagara Falls Rapids. I can't make that claim today. We lost the Rapids. Upon completion of your testimony, Congressman, I would welcome you to sit with our committee to hear the testimony of today's panel if your schedule permits that. You may proceed.

**TESTIMONY OF HON. SHERWOOD BOEHLERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. BOEHLERT. Thank you very much, Mr. Chairman. The only thing that is missing is the playing of the National Anthem. But I want to thank you and I want to thank Mrs. Meyers and the members of the committee for conducting this important hearing and giving me an opportunity to speak about something that is very near and dear to my heart, and that is baseball.

As Chairman of the congressional Minor League Baseball Caucus and, most importantly, as an unabashed fan who candidly admits that the box scores in the morning paper get my first attention, I have a long history of involvement with baseball. That is why I am particularly interested in the important work of this committee, examining the effect of the historic antitrust exemption on minor league baseball.

I also happen to represent Cooperstown, New York, the legendary birthplace of our national pastime. Strolling through the hallowed quarters of the Baseball Hall of Fame, it becomes apparent just how much the sport has influenced our history.

Chairman LAFALCE. I think there ought to be a law that every American has to visit Cooperstown at some time in their life.

Mr. BOEHLERT. You are absolutely correct, and I would endorse that and cosponsor that legislation.

Chairman LAFALCE. Along with Niagara Falls.

Mr. BOEHLERT. Indeed, like a Norman Rockwell painting, baseball itself is a reflection of the American spirit, invoking fond memories of summers gone by. It is a refuge from the often harsh realities of life. We may not have an immediate solution to the crisis in Rwanda or the nagging quandary in Haiti, but I will wager that most of us recognize that the pennant hopes of our favorite team would be enhanced considerably if we could just get a starting southpaw who would give us 240 innings or an effective closer with smoke.

We even have our own language, as you see.

However, in stark contrast to the romanticism of the game, baseball is also a business. It is a business exempt from the antitrust laws which govern our land, and unfortunately, it is also a business plagued by uncertainties and, most recently, labor disputes which threaten the continuation of the season. So, Congress has reopened the book on the all-American game.

While we have concentrated on major league baseball, we have largely overlooked the minors, even though the vast majority of professional baseball is played at the minor league level. So, last May I decided to organize a group of my colleagues who were similarly interested in the minors; thus, the Minor League Baseball Caucus was formed.

Quite frankly, when we got started, we thought we were going to have some fun swapping baseball stories and dealing in a more general way with the future of our beloved sport. But now we find ourselves focusing on the threatened repeal of the antitrust exemption.

We believe that because of the unique station that baseball holds in American society and because of the legal privileges it has been granted by Congress, we have a special responsibility to ensure

that the game endures. Unfortunately, there is a dearth of understanding about how baseball itself is organized and how a repeal of the antitrust exemption could effect the minors.

During this, the 125th anniversary of professional baseball, we should remember that over 30 million people will attend minor league games. In my own State of New York, 13 minor league teams will compete in big cities like Buffalo and little villages like Batavia. In fact, the 17 leagues of the National Association of Professional Baseball Leagues are spread across 42 States. Each of these teams is a wellspring of civic pride, greatly enhancing the local quality of life; and I should add, contributing to the economic well-being of communities. From coast to coast, even clubs at the lowest levels have payrolls of 30 to 35 people and up, attracting baseball fans from afar, who spend their money and stimulate local business.

The current composition of professional baseball with its few dozen major league teams and a 171 minor league affiliates—Mrs. Meyers, small businesses contributing significantly to the local economy, 171 of these teams—was, of course, conceived by the legendary Branch Rickey, who divined that a major club would benefit by developing talent at the minor league level. From this evolved both the uniformed player contract and the professional baseball agreement which now governs the relationship between the majors and the minors.

In many respects, these contractual business relationships depend upon the antitrust exemption for their existence. If Congress is going to repeal this exemption, we must consider how these relationships will be altered and what effect it will have on the business of baseball—in particular, the small business of operating a minor league team.

I believe you have assembled a fine cross-section of the industry here today. Testimony you will hear should go far in advancing your understanding of the game, and I must commend you, Mr. Chairman. I am impressed with the witnesses you are going to have following me, and I particularly wish to pay note to Bob Julian, who is a very close personal friend and a constituent of mine. He is president of the New York-Penn League. This is his maiden season as president of this league, and many people contend he should be the minor league executive of the year. He is on the frontline.

Incidentally, he is a citizen of the community. This is not his full-time occupation. This is a labor of love for a highly respected attorney in New York. But he loves the game of baseball, as do I, and that is why he is involved. So, I think you will learn a lot from listening to him, because he is the president of the Class A New York-Penn League, who play 78 games a year—teams in places like Auburn and Oneonta—and you will hear a lot from him.

Chairman LAFALCE. Saying all that, despite the fact that he is a constituent.

Mr. BOEHLERT. Despite the fact that he is a constituent. You are absolutely right. Very observant.

I would caution that we keep in mind that baseball is, in fact, a unique business. We obviously wouldn't be here today if we were talking about a string of fast food restaurants. I would argue that

professional sports teams do not operate in what we traditionally think of as a free market. Minor league teams are truly partnerships between players, owners, local governments and fans; and while no other professional sport enjoys an exemption from anti-trust laws, I would point out, no other sport has a minor league system similar to baseball's. Of course, all of this does not justify the numerous problems surrounding baseball, but it should be kept in mind when we discuss any possible remedies.

So let's examine all of the options and carefully consider these challenges before we throw the baby out with the bath water. Anyone who has been to a ball park lately would know that baseball is currently enjoying great success, success that can't always be quantified in dollars and cents. If you haven't seen a game this year, I would invite all of my colleagues to come with me and see what you are missing.

When all is said and done, though, Mr. Chairman and members of this committee, the heart of this issue is this: Just about everyone in minor league baseball with whom I have talked—and I have talked with many from the rookie leagues to the AAA clubs—just about everyone is convinced that lifting the exemption from baseball would deal a crippling blow to the minors for one basic and obvious reason: If the clubs lose the exemption which, among other things, permits the player development contract, it is generally conceded that the incentive for the majors to finance the minors will be gone. Without the cash from on high, gone too will be clubs like the Oneonta Yankees and probably the threat to Mud Hens, the Jamestown Jammers, the Auburn Astros, and the Batavia Clippers. A colorful and, I would submit, important piece of Americana would be lost.

Mr. Chairman, I would be glad to respond to any questions. But I would like to point out a couple of things. People just have no appreciation for what it is like. The Oneonta Yankees is a classic example. Class A New York-Penn League in my district, a community of 10,000 people, affiliate of the New York Yankees; they don't even sell beer at the ball park—which incidentally is one of the big revenue raisers in minor league baseball—popcorn and hot dogs. They have a payroll of 25 players, all making about \$1,000 a month. They have coaches and trainers and managers.

Before a game can even start, they have to have 6 to 10 dozen balls available. You have been to ball games. You see what happens. A ball gets hit in the stands, the club owner scratches his head and says, "There goes 5 bucks more."

I mean, it cost a lot of money to maintain these 171 small businesses across the country. One of the reasons why the major leagues continue to finance this very unique system is because they will sign a young guy like the Yankees do with a Bryan Taylor, pay him a million and a half bucks to put his name on the dotted line, then send him to the minors to develop over the years, with the hope and expectation that at some time that investment will pay off and he will go to the show, so to speak, the big leagues.

But let me tell you, most of the guys never make it to the big leagues. They enter the professional sport, they are good enough to dream, as Roger Kahn mentioned in his famous book of 1983 about the Utica Blue Sox, but most of them never make it. But what they

do is provide wonderful entertainment for communities across the country.

Thirty million Americans this year are going to enjoy minor league baseball. If you haven't experienced it, you owe it to yourself. Come to any park in the Nation and you will see, in all likelihood, three generations sitting together—dad, his dad, and his son, popcorn, hot dogs, soda, enjoying America's sport—made possible, I would submit to you, because the major leagues have the protection of the antitrust exemption, and the major leagues are providing all the financing, or most of the financing for the continuation of minor league baseball.

I am not here as some shill for the George Steinbrenner's of the world, although I candidly admit, I am an unabashed Yankee fan. But I am here for the preservation and enhancement of minor league baseball and what it does for communities all across this Nation in terms of quality of life and what it does for the economic well-being of those communities—as Mrs. Meyers points out, small businesses, creative entrepreneurs, making a go of it. I think it is good for America.

Thank you.

Chairman LAFALCE. Thank you very much, Mr. Boehlert. I think you gave an eloquent statement on behalf of minor league baseball. I think minor league baseball is as fortunate to have you as Chairman of the Minor League Baseball Caucus as your constituents are very fortunate to have you as their Congressman.

I have no questions.

Mrs. Meyers?

Mrs. MEYERS. I have no questions. I want to thank Representative Boehlert for his statement. I too thought it was eloquent. I look forward to the testimony from our witnesses.

Mr. BOEHLERT. Thank you.

Mr. KNOLLENBERG. Just to echo the same thing. I appreciate your freshness about the approach to minor league baseball and baseball in general. I can see that you are indeed a fan. I am, as well, so I am looking forward to the testimony from the additional witnesses. Thank you.

Mr. HUFFINGTON. I just wanted to stand up and clap after I heard that.

Mr. BOEHLERT. Well, thank you very much.

Let me say, I would encourage all of you. I know the Chairman is an active member of the Minor League Baseball Caucus. We are doing things the right way with the caucus—no paid staff, all volunteers, no formalized structure, just people who have a genuine love for the game and want to see it work.

As the Chairman knows, we had a session here 2 months back, brought in presidents of various leagues from the AAA down to the single A, and we had this—not this room, a bigger room, as a matter of fact, packed because people were genuinely interested in it. So, I encourage all of you to affiliate with the Minor League Caucus and it is for a worthy cause.

Chairman LAFALCE. Thank you very much, Congressman.

Mr. BOEHLERT. Thank you.

Chairman LAFALCE. I wonder if the additional witnesses on our distinguished panel will come to the table, Mr. O'Conner, Mr. Johnson, Mr. Brand, Ms. McGettigan, Mr. Julian, and Mr. Weiler.

Chairman LAFALCE. We will begin our witness panel with Patrick O'Conner, the chief operating officer for the National Association of Professional Baseball Leagues. Mr. O'Conner is the former director of Florida Minor League Operations for the Houston Astros.

Following Mr. O'Conner will be Arthur T. Johnson, professor of political science at the University of Maryland, Baltimore County. Professor Johnson is the author of the 1993 book, *Minor League Baseball and Local Economic Development*, and has done a number of studies and articles on minor league baseball.

Next we will hear from Stan Brand, the vice president of the National Association of Professional Baseball Leagues, and as a number of Members of Congress know, a practicing attorney in Washington, DC.

Mr. Brand will be followed by Marianne McGettigan, a practicing attorney with the firm of Fehr & Dana in Portland, Maine, which directs the negotiations for the Major League Baseball Players Association.

Next is Mr. Robert Julian, a practicing attorney in Utica, New York and president of minor league baseball's Class A New York-Penn League.

The final witness will be Paul C. Weiler, the Henry J. Friendly Professor of Law at Harvard University. Professor Weiler specializes in sports law and antitrust law and is the author of a legal case book entitled "Sports and the Law."

I truly believe that this is the most expert and distinguished panel that has been assembled on this subject before the Congress. I also think we have a very balanced panel with respect to perspectives on the various issues. I am most anxious to hear from all of you.

We will include the entirety of your prepared testimony in the record. I would ask you to either give that testimony or summarize it, and since we have six witnesses, to confine your opening statements to no more than 10 minutes apiece, so that we would have adequate time for a dialogue amongst the members of the panel and the members of the committee.

Mr. O'Conner.

**TESTIMONY OF PATRICK O'CONNOR, CHIEF OPERATING OFFICER, NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES, INC.**

Mr. O'CONNOR. Thank you, Mr. Chairman, members of the committee. It is a pleasure and an honor to be here in front of you today.

Briefly, my history: I am a 14-year career professional minor league administrator. I have a Masters' degree in Sports Administration from Ohio University and, professionally, minor league baseball has been my avocation, profession, hobby and love as an adult.

The National Association is the governing body of all of the minor leagues in the country. We have 19 leagues throughout the

United States, Canada, the Dominican Republic, and Mexico. The National Association is actually a collection of small businesses, some of which are owned by baseball-loving investors, some of which are owned by communities, and many of which are still family run operations. We feel that we have a niche in America in supplying smaller communities with professional baseball at affordable prices, in addition to our role as the training ground for the major league stars of the future.

Some have accused us of masquerading our position as nostalgia. If we are just nostalgia, a lot of people are living in the past. Whatever else we are, the minor leagues are an important part of current life in America.

We had tremendous increases in attendance in minor league games in recent years. Studies show that the average cost of taking a family of four to a major league game is around \$100, while in the minor leagues it is still closer to \$20. Furthermore, at a time when sports pages are filled with more big business than sports, when it comes to major league baseball, even veteran sports writers publish flattering articles about minor league baseball.

For instance, this past April, I had an opportunity to read a column that appeared in the Daytona paper, and it said this, and I will quote from the article:

The minors are the last bastion of baseball purists. The minors are where baseball is played on a human scale. No TV scoreboards, no skyboxes full of corporate types, no plastic grass, no \$10, partly obscured seats. The players are not millionaire specs of uniform in the distance, but full-sized, close-up, sweating, spitting humans playing their hearts out. If a person from a half century ago fell into a worm hole in time and arrived at my office, my church, my kids' elementary school or the grocery store, it would be utterly disoriented. But if he were to pop up in the bleachers next to me, he would ask only two questions: "What inning is it?" and "How can they sell popcorn at a buck-fifty a box?"

In June of 1994 edition of Readers' Digest, an author talks about Appalachian League play near the very bottom of the baseball ladder in Bluefield, West Virginia. It is the home of an Orioles farm club that has kids on the roster who are just out of high school. The Bluefield club is described as being in "a friendly town where free lemonade is offered when the temperature soars, and where minor league baseball is still an innocent, enduring game."

As the Chief Operating Officer of minor league baseball, I need to point out that we shouldn't be here because of a labor relations battle on the major league level. We should be here to help this committee evaluate the effect on small businesses of a change in the law.

No one could predict for certain what would happen if minor league baseball is subjected to the antitrust laws for the first time in its rich history. All anyone knows for sure is that a unique system of player development that baseball was born under, grew up under and matured under was free of the antitrust laws. It is simply unfair to change the rules after so many people and communities have invested in baseball's infrastructure, secure that things such as labor rules restricting franchise move cannot be challenged by groups from competing cities.

We also know that minor league baseball isn't characterized by monopoly profits. Even the professors who have testified before Congress in favor of repeal have admitted that. So, if there is no shortage of supply of the baseball product and there are no monopoly profits, what is broke that needs fixing by application of antitrust laws?

What we also know is that many teams lose money or are break-even operations, and it wouldn't take much to break their fragile economic underpinning. The costs of defending lawsuits over territories and player assignments would literally kill some clubs. Professor Gary Roberts of Tulane Law School testified before the Senate Judiciary Subcommittee in 1992 that repeal would turn over to judges the running of leagues.

But most of the damage to the minor league economy would come from the effect on the contract we have with our major league partners. If the majors couldn't invest bonuses and salaries knowing that the reserve clause would guarantee them a return on that investment, it wouldn't pay players to play on our teams.

Whenever in the past they have come to Congress to justify the exemption, they point to their support of the minor leagues. It is not hard to figure that if they lose the exemption, some owners might view us as just one more unnecessary expense to cut so that they can afford the lawsuits and million dollar player salaries at the major league level. Who loses then? Small businesses and the fans in these small towns.

As Professor Roberts testified before the Senate, "The baseball exclusion from the antitrust laws plays its most significant role in allowing the major leagues to maintain its complex relationship with the minors without fear of serious antitrust challenge. Thus, abolishing the antitrust exclusion might lead to radical changes from the structure and operation of the minor leagues and could potentially alter the structure and behavior of all professional baseball, albeit in unpredictable ways."

With emphasis, "If the baseball minor leagues as now constituted are good from a policy standpoint, this would be a good reason to continue giving baseball special antitrust protection, not needed by the NFL and NBA, who have the colleges for minor leagues."

That is from Dr. Roberts' December 10, 1992 statement before the Antitrust Subcommittee in the Senate.

Again, we are very happy to be here, and as time permits, we would be happy to answer questions, Mr. Chairman.

Chairman LAFALCE. Thank you very much.

[Mr. O'Conner's statement may be found in the appendix.]

Chairman LAFALCE. Our next witness is Dr. Arthur T. Johnson. Dr. Johnson.

#### **TESTIMONY OF ARTHUR T. JOHNSON, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF MARYLAND, BALTIMORE**

Mr. JOHNSON. Thank you, Mr. Chairman. You summarized my background earlier, so I will not do that, but I will say that my hometown is Beacon, New York, which is the new home of the Hudson Valley Renegades of the New York-Penn League, and I am told by family and friends there that a ticket to the Renegades



game is as hard to get as a ticket to the Orioles games in Baltimore.

The focus of much of my work—most of my work, actually—is from the perspective of local government. I am concerned about the public interest and what local officials have to deal with when they deal with professional sports organizations.

I have prepared a paper that examines arguments put forth by major league baseball regarding minor league baseball and the antitrust issue. In that paper, I draw from my research and discuss the business of minor league baseball franchises and their relationship to major league baseball and to their host communities. The theme of that paper is that major league baseball dominates the business of minor league baseball at the expense of the public interest and often of the minor league franchise owner. You have a copy of that paper. What I want to do today is simply summarize that paper in the time that I have.

The arguments of major league baseball against repeal of antitrust, I believe, are based upon myths and nostalgia. My paper tries to compare reality to the myths. The highlights of the paper: First, the Professional Baseball Agreement.

The relationship between major league baseball and the National Association of Professional Baseball Leagues is governed by the Professional Baseball Agreement. The PBA was finalized at the end of 1990 in extremely bitter negotiations during which major league baseball threatened to abandon the minor leagues. The research for my book was being conducted at about that same time.

Professor Neal Sullivan in his book entitled "The Minors" describes the history of the minor leagues as being scarred by the major league's efforts to keep the minor leagues subordinate. The PBA continues that tradition. It significantly tightened major league baseball's control over the player development contract, minor league franchise ownership, minor league franchise location, league expansion and stadium specifications. It makes no guarantee that the number of franchises will remain at existing levels. It drastically changed the financial relationship between major league baseball and the minor leagues, and I believe much of that is outlined in Mr. Brand's testimony to the New York State legislature.

Major league baseball's control goes so far as to dictate the number of umpires that leagues may use in a game. For example, only two umpires are permitted at the A level. Recently, an umpire was injured during a game and players had to umpire. One manager called the incident "the most ridiculous thing I have ever seen in professional organized baseball."

Second, the myth of local ownership: Congressional committees have been told by representatives of major league baseball that minor league baseball is a business controlled by local owners. That is a myth. In a survey that I conducted in 1989 of communities hosting minor league baseball teams, only 52 percent of the respondents indicated that their team was owned locally. That was in 1989. Of that 52 percent, a very small fraction reported that ownership was in the form of nonprofit community organizations like those found in Rochester, New York, and Toledo, Ohio, or owned by government organizations as in Wilkes-Barre-Scranton, Pennsylvania. The PBA probably has made it more difficult for

nonprofit community organizations or for local governments to own and control their local team. Yet, major league baseball representatives will consistently invoke that myth.

The fact is, minor league baseball is a profit-oriented business, often owned by investment groups and others who have no connection to the local community. But let me be clear when I say that, I simply state that as a fact, I don't state it judgmentally. There is nothing wrong with making a profit, and I am glad that this committee recognizes minor league baseball as a small business. That is the thrust of the introduction to my book.

Third, local government investment: More than 95 percent of minor league stadiums are publicly owned. That is key, and that is key to my research. The PBA dictates the specifications for minor league stadiums. These range from standards for rest room and club house facilities to lighting standards on the field, and they will take effect in 1995. HOK, a leading architectural firm, has estimated that communities will need to invest anywhere from \$100,000 to \$2.5 million to renovate existing stadiums to meet these standards. If renovation is not possible, the cost of new stadiums begins around \$4.5 million. Clearly, many American communities cannot afford this cost.

Hagerstown, Maryland, as mentioned earlier, lost its AA—level team because local officials and the then-existing team agreed that the community simply could not afford the amount of money necessary to renovate the stadium. If a community cannot afford the cost, the franchise will relocate.

In the years before the impact of these new standards—1990, 1991, and 1992—the total number of minor league franchise relocations were two in 1990, four in 1991, four in 1992. As the standards had their impact, the number of relocations jumped to 14 in 1993, 13 in 1994, and probably a similar number or higher in 1995. In other words, cities today are losing their teams.

It is the smaller communities, the very communities that you talked about earlier, that will likely be hit the hardest. From 1987 to 1993, two-thirds of the franchise relocations were from towns of less than 100,000 in population. The vice president of the National Association testified before a House subcommittee that, and I quote, "One of the principal benefits of minor league baseball is to bring the game of organized baseball to small town and rural America."

That is the way it used to be. The PBA's stadium requirements make filling this traditional role of minor league baseball less and less likely.

This is the way one minor league commissioner views the plight of small communities, and I quote from an article in *Baseball America*, November 1, 1993, page 19:

"Baseball has its evolution. This is simply the trend today. You have larger cities becoming involved with long season Class A. It is not just us here in the Midwest League. Look at the California League, the Carolina League, the South Atlantic League."

He goes on, "Owners have come to realize that you just don't make enough money in a small market. You are better off with a CD at 3 percent."

The PBA has forced more and more minor league franchise owners to threaten their host communities with relocation if they do not get their stadium demands met. Some in the media, when this happens at the major league level, call it extortion.

What is the importance of minor league franchises to communities? From my research, I concluded that minor league franchises are small businesses with little direct economic impact on a community. However, when a community is able to integrate a minor league team and a stadium into a comprehensive community development plan so that there is a development role for the stadium, the team will be a very important factor in promoting growth in that local economy. In addition, as we all know, minor league franchises bring valuable intangibles to communities, especially in the area of family entertainment.

My book, a series of 15 case studies, reports how communities have successfully and unsuccessfully used minor league teams in their cities for economic development. The fact is, owners of minor league franchises are not independent operators. Given the negative impact on the economics of franchise ownership as compared to before the new PBA, they may be less able to make long-term plans and therefore may be more reluctant to enter into long-term leases with their host communities. This makes it difficult for local governments to do the necessary planning that makes investing in a minor league stadium a wise public policy decision.

You also will be told that minor league baseball is a very affordable form of family entertainment. We have already heard that. That is true. But consider this: If the local movie theater owner had his theater built and paid for by the local government and paid little or no rent, he too could charge a lot less than the \$6 or \$7 that he currently gets for a movie ticket.

Thus, what we have today are minor league franchise owners receiving a public subsidy and competing with other local business people for the public's entertainment dollar. Yet many of the significant decisions that may affect a community's minor league franchise will be made in New York, in the New York office of the Commissioner of Major League Baseball, not in the local community.

In conclusion, then, I would argue that the myths and nostalgia that most fans associate with minor league baseball do not accurately describe the realities of the business of minor league baseball in the 1990's. The contents of the PBA and the manner in which major league baseball has treated minor league baseball are a threat to long-standing investments that local governments already have made in their existing stadiums, and have harmed the minor league team owners who wish to be partners with their host communities. However, given the control exercised by major league baseball over minor league baseball leagues and their franchises, and the fear of retribution, I believe it will be unlikely that you will hear the complaints and cries of foul that I heard from owners and team officials when I was doing my research in these very same small communities that we are concerned with today.

Thank you.

Chairman LAFALCE. Thank you very much, Professor Johnson. You have provided a considerably different perspective from that which we heard.

[Mr. Johnson's statement may be found in the appendix.]

Chairman LAFALCE. Now for a much different perspective from yours, Mr. Stanley Brand.

**TESTIMONY OF STANLEY M. BRAND, VICE PRESIDENT, NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES, INC.**

Mr. BRAND. Thank you, Mr. Chairman. I am not a professional baseball man. I actually ran for president of the NA after serving here in the Congress as general counsel to the House of Representatives from 1976 to 1984 under Tip O'Neill, a man himself who knew quite a bit about baseball and from whom I learned.

What I would like to do is reserve my time to engage in some debate, if I could, offer my reaction to some of the points that have been made.

I would like to address at the outset two points that Mr. Johnson made; and I should say, having read his book, there is a tremendous amount of valuable information in that book with which I agree. He mentioned myths, and he said that Hagerstown, Maryland lost a team. It is true they lost a AA team. That team was replaced with a South Atlantic League single A team at no cost to the community.

As to the statement that he made about the major league's refusing to honor their commitment, they have signed a PBA, which is effective through 1997; absent either party reopening this year and for that period of time, they have agreed to maintain the level of player development contracts, so that for the immediate future, they have evidenced their intent and their commitment to minor league baseball.

It is true—and I wasn't there at the time, but shared a lot and learned a lot about the negotiations that went on in 1990—there were great feelings on both sides of the table, like any negotiation. The fact is that the parties were able to agree on something that I think preserved minor league baseball in its essence for the communities that it was in; and we agreed to a going-forward plan for meeting the challenges for the next period of time. We have shared more of our revenue with the major leagues as a result of that agreement, and they have, on their part, agreed to commit to the maintenance of a set number of player development contracts.

So, while the negotiation was certainly give and take and in some instances difficult, the outcome was a continued relationship and a continued stability for the minor leagues.

So I did want to point that out in my opening comments.

I will just say briefly about the antitrust exemption, there has been a lot of discussion about it. It has really been explained today, I think quite adequately, in terms of its impact on the minor league. The antitrust exemption, as I view it, has been really a prism through which the frustrations that baseball has as an industry have been expressed, and not every remedy and problem that baseball faces can be addressed through the antitrust laws.

There is great consternation about team relocation and team movement. The fact of the matter is that today, the only reason and the only basis upon which baseball can restrict the movement

of franchises—how it restricted San Francisco from leaving—is because they are exempt from the antitrust laws.

When Bob Irsay moved in the midnight move, the Baltimore Colts from Baltimore in the middle of the night, there was not a thing that the community could do. When Oakland moved to Anaheim, there was not a thing that Oakland could do.

The fact of the matter is, baseball has stopped every franchise move since the Washington Senators left this city in 1972, and they have done so because they have the protection of the antitrust exemption.

Second, the argument is made that if you lift the exemption, you will have unfettered expansion, and you will have major league baseball in markets that do not now have it. That simply is not correct as a matter of law or as a matter of economics. As a matter of law, no one can sue to force a league to expand if it chooses not to, if it decides it doesn't have the economic viability to do that. That is case law in the Ninth Circuit, and it is case law elsewhere in the country. Rejected suitors who want to expand simply can't force a league to create an opportunity, an economic opportunity for them to do that under the antitrust laws.

So while we are exploding myths, I wanted to explode two myths about how the antitrust laws are purported to serve the interests of the fans.

Now, there have been lawsuits in the NFL under the antitrust laws. Indeed, one owner who owned the New England team sued the league and obtained a \$100 million-plus judgment because the league refused to let him publicly sell shares in the team. The only person who recovered from that judgment was the owner. The fans did not participate in that judgment, and I would venture to say, those kinds of judgments have only one effect, and that is, they put additional pressure on ticket prices and revenue.

So the people who have benefited by the antitrust laws have not been the fans; they have been errant owners suing leagues. So, I wanted to bring those cases and those developments to your attention as well.

At this time, Mr. Chairman, I would reserve any further time I have for answering questions or comments of other members of the panel.

Chairman LAFALCE. Thank you very much, Mr. Brand.

[Mr. Brand's statement may be found in the appendix.]

Chairman LAFALCE. Our next witness representing the Major League Baseball Players Association, Ms. Marianne McGettigan.

#### TESTIMONY OF MARIANNE McGETTIGAN, MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Ms. McGETTIGAN. Thank you. On behalf of the Major League Baseball Players Association, I would like to thank the committee for the opportunity to testify today.

Donald Fehr, the executive director of the Association, had hoped to appear today, but unfortunately, he must be in New York for on-going labor negotiations. If the committee has any questions for Mr. Fehr, I am sure he would be happy to answer to them subsequently for the record.

[The information may be found in the appendix.]

Ms. MCGETTIGAN. Also today with me is Mr. Steven Fehr, an attorney from Kansas City, Missouri. Steve has had considerable experience in many aspects of baseball since 1980. He has represented dozens of major and minor league players in individual contract negotiations.

In addition, he was one of the lead attorneys for the players association in the collusion cases of the mid-1980's involving conspiracies by major league clubs against free-agent players, and is outside counsel to the Association on an ongoing basis on a variety of issues.

With the committee's permission, I would like to allot a short portion of my time at the conclusion of my remarks so that Steve can share his considerable experience with minor league players with the committee, or through the questioning process.

As was said, I am an attorney in private practice and have been directing the governmental affairs activities of the Association since 1992. My involvement in issues relating to baseball and sports in general relates back to when I joined the Washington State Attorney General's Office in 1975. At that time, then Attorney General, now Senator, Slade Gorton was suing the American League for the move of the Seattle Pilots out of Seattle 1 year after they had moved in. The Pilots, of course, are now the Milwaukee Brewers. That lawsuit was settled as the case was going to the jury, resulting in the expansion of the American League by two teams, the Mariners and the Toronto Blue Jays.

As a result of that experience, when Senator Gorton joined the Senate in 1981, one of my first assignments as a member of the Senate staff was to draft a bill to address the issue of sports franchise relocations.

I was not going to include this in my oral statement, but since Mr. Brand raised it, I would note that in the course of our efforts to deal with issues relating to relocation, the Davis case and its appeals were being heard, and the notorious midnight ride that the Baltimore Colts took to Indianapolis took place. At the same time, as Chairman of the Consumer Subcommittee, Senator Gorton dealt with a variety of other sports legislation, including the efforts by Senator Rudy Boschwitz to keep the Minnesota Twins in Minnesota.

I don't think there is any way any one can read the Davis case all the way through and conclude that the other sports leagues have no authority to prevent relocations. That is simply not the case. What the court said is, you must merely meet the recall of reason test under the antitrust laws, and that the rule in effect, at the time in major league—I am sorry, in the National Football League was on its face unreasonable because it simply required a three-quarters vote, with no factual statements supporting that vote, as to why the teams couldn't move. In fact, the Davis case was really a question of who got the profit of the then-vacant L.A. market, Al Davis or the rest of the owners of the NFL. Subsequently, an attempted move by the Eagles was stopped by the National Football League using criteria from various Senate bills that had been filed, but not necessarily passed, but those criteria were applied to stop the Eagles' move.

When the question of the antitrust exemption was first raised in the Senate Judiciary Committee hearing in December 1992, there were two points that are particularly interesting that were raised. First, Fay Vincent, who had recently reluctantly “resigned”—and I use that word in quotes—as Commissioner of Baseball told the committee that, quote, “Baseball is not seriously dependent on the continuation of the antitrust exemption.”

Second, the minor leagues were barely mentioned by acting commissioner Bud Selig for his justification for continuing the exemption. By March 1993, however, when the House Judiciary Committee held a hearing on the exemption, the minor leagues had become a focus, if not the primary focus, of the exemption’s justification. Proponents of repeal of the exemption—and I might add there is a great degree of debate as to the precise scope of the exemption—were now forced to respond directly to the assertions that the elimination of the exemption would end minor league baseball as we know it. This has turned out to be a terribly difficult job, largely because the arguments of the demise are wholly conclusory. We have never seen data or economic analysis to support any of the arguments; there have been many “what-ifs.” We believe the flexibility inherent in the antitrust rule of reasoned approach is more than adequate to deal with any of those “what-ifs” if the antitrust laws apply, including the reserve clause.

It is not true that any form of a reserve clause would necessarily be a violation of the antitrust laws. It might take some creativity and it might take a slightly different approach, but there is no reason to believe that minor league baseball could not continue in a very similar fashion to what it is now. The point is that there is no law to deal with the “what-ifs” associated with the use of monopoly powered by the major leagues if the antitrust exemption continues.

Simply put, the minor leagues have more to fear from the major leagues themselves than they have from the application of the antitrust laws. We believe the minor leagues understood this all too well when they came to Capitol Hill in 1990 in the course of the renegotiation of the professional baseball agreement that you have heard talked about, seeking support for repeal of the exemption that they now support. We believe they may be back again before Congress sharing our view about the inappropriateness of the exemption in 1997, or even next year, when the PBA expires again.

Let me briefly outline the perils presented to the minor leagues by the major leagues when they are permitted to act above the law that applies to every other business in the country unless that business is subject to regulatory control, such as a public utility.

At the most basic level, minor league owners have no control over their destiny. They have little, if any, independence and no leeway to advocate to improve their position because they are essentially captives of the economic power of the major league owners. As a practical matter, while other affected parties may argue the scope of the exemption, minor league baseball may not.

For instance, the exemption has been held not to apply to local radio broadcasts or to dealings with other employees, such as umpires. Most recently a U.S. District Court judge in the eastern district of Pennsylvania has held that the exemption applies only to

the player reserve clause. That case, *Piazza v. Major League Baseball*, is ongoing and may make opponents of legislation eventually wish that they had sought legislation to ease the transition to a free enterprise system rather than fighting to preserve this anomalous exception. But what minor league team will dispute the scope of the exemption with major league baseball in the face of upcoming negotiations to extend the professional baseball agreement?

The minor leagues have virtually no leveraging in bargaining the next agreement with major league baseball. If major leagues choose to abandon some or all of the minor leagues as they threatened to do in 1990, the minor leagues will have no protection against anti-competitive collusive action by the owners. For instance, if the major leagues abandon the minor leagues, the owners could simply put out the word that if a young player signed with the minors, he will never play major league baseball. You either go with the major leagues or you are not going to play for major league baseball.

The minor leagues covered by the 1990 agreement may not expand without the permission of the major leagues, yet the major leagues not only determine what territory belongs to the minor league team; they may also take it for purposes of placing a major league team in the territory. Although the PBA does require compensation for territory so taken, my understanding is that—and we would be happy to supplement the record in this regard—at least in one case the minor league team is having trouble obtaining that reimbursement for the taking of its territory by a major league team.

[The information may be found in the appendix.]

Ms. MCGETTIGAN. If some minor league teams, either those currently affiliated with the majors or independents—and I might add, the mention of 171 minor league teams is somewhat confusing, because that refers only to the number of minor league teams affiliated with the major leagues; there are a number of growing and prospering minor leagues that are independent of the major leagues that do not have the player development contracts that these leagues are now telling you they depend upon for their existence.

But if any one of those leagues sought to establish itself as a new major league to serve the considerable number of currently unserved markets, the baseball cartel could use all of its collective economic power to thwart that effort without worry of any court or regulatory agency oversight.

I might add that among your colleagues, Congressman Bryant is the Commissioner of the new, independent Texas-Louisiana League, and I am sure he could answer any questions you might have about what it is like to operate an independent league.

Finally, with regard to the minor leagues themselves, if there is a work stoppage at the major league level, the major leagues may unilaterally halt play at the minor league level. I know—I will state in advance, Mr. Brand will take exception to my characterization of this, but I think if one reads the PBA, which says that the minor league clubs shall abide by and not interfere with all of the contracts between the major league club and the players that it has provided to the major league club, and then if you refer to the player contract, which is a uniform contract which every minor league



player must sign and cannot make any changes in, paragraph 23 of that contract says, "This minor league uniform player contract is subject to the authority of the Commissioner to suspend the operation of this contract, including payments of compensation to player during any national emergency or any cessation or suspension of play in the major leagues."

That is the only contract that the player signs. He signs it with the major league club and it comes down to who signs my checks; if your major league club tells you not to take the field, I don't think you are going to try and buck that order.

Chairman LAFALCE. Ms. McGettigan, your testimony is very interesting, but your 10 minutes has expired. I would ask you to please conclude.

Ms. MCGETTIGAN. I will just conclude—I just want to make one comment, and that is about the minor leagues, in our view, are victims of the economic power of the majors, but the bigger victims are the cities and towns who have essentially been given an unfunded mandate; and I am sure members of this committee are very familiar with constituents' reaction to unfunded mandates.

In this case it is simply worse, because they have no one who they can go to, no one they voted for to complain to. They have no one at the table when the PBA is negotiated to represent their point of view or to offer an amendment. At a recent conference, the U.S. Conference of Mayors' annual meeting, the question was raised as to whether or not they could try and get the stadium requirements put off for another 2 years; and I would point out that if they are put off for another 2 years, it is 1996, the PBA expires in 1997 and no one knows what will come at that point.

As the City Administrator of Niagara Falls put it, the situation is that baseball is looking to extract a commitment from the cities, but not make a commitment.

Thank you.

[Ms. McGettigan's statement may be found in the appendix.]

Chairman LAFALCE. Our next witness is Mr. Robert Julian, the president of the New York-Pennsylvania League.

Mr. Julian.

#### **TESTIMONY OF ROBERT JULIAN, PRESIDENT, NEW YORK-PENNSYLVANIA LEAGUE, UTICA, NEW YORK**

Mr. JULIAN. Thank you very much, Mr. Chairman and members of the committee. Having heard what was said, I think that I will totally abandon my prepared remarks and perhaps respond to several of the themes that have been discussed.

I bring to the table perhaps only one unique experience apart from being a baseball fan, like all of you, and that is that I have the opportunity presently to be president of a minor league. This is my second year of doing this job. By vocation, I am a lawyer and I still practice law. I am also a county legislator in Oneida County, and Oneida County is a landlord of the baseball park, one of the baseball parks that has been referred to that must comply with the player development contracts. So, I do think that this may be one of the few moments in my life when I actually can offer you insights that some of the other people at the table may not be able to offer.

Let me say several things: As a league president and as a fan of the New York-Penn League and of minor league baseball, I can tell you that the facility problem for minor league baseball, especially in the northeast where minor league baseball is quite old, is a long-standing problem.

The PBA that has been referred to which was adopted in 1990 was actually positive development, because it required communities to make investments in facilities that were very old and that had dangerous features. In the New York-Penn League, the average facility in New York State was close to 40 years of age; and I can tell you, having actually personally surveyed each of those facilities that there were some communities that had not even applied a coat of paint for much of that period of time.

What this agreement has done, in essence, is to force communities and team owners to do the kind of gut check it takes to operate any business. The issue was to see whether a viable public-private partnership can be worked out to allow baseball to remain in communities with old, outmoded facilities.

Many communities met that gut check. In New York State, for example, working with State government, Governor Cuomo and the State legislature put together a very comprehensive and aggressive package to fund ball parks. One of the things that the State of New York insisted on was that in return for funding there be commitments from the minor league teams and from the league that if the park is improved, teams will stay.

Professor Johnson referred to Beacon, New York as one of the communities. It is actually the Hudson Valley Renegades that we are talking about. They are located in Fishkill, just outside of Poughkeepsie, and let me tell you a couple of things about that team. It is a new team, a new facility being built with \$6 million-plus of local and State money with private fund-raising.

We talk about community ownership. The first thing one of the owners of that team did upon approval of the park construction was move there and buy a house in that community. Now, I don't know whether he meets the definition of local owner or outside owner. You are sophisticated people and you understand that this is now a very mobile society. I think he is a local owner; he lives there 12 months a year and he operates his team.

The Hudson valley team has entered into a 12-year lease that is guaranteed by the league. In the past 2 years, the New York-Penn League went from the average stadium lease being about a 1½ to 2 years to where the present new facility lease averages about 11 years. The average rehabilitated facility lease is about 7 years. So, as you can see, by virtue of making capital investment, communities get back certainty in the form of long-term lease arrangements.

I also think that there is, in fact, leverage for the minors in their dealings with the major leagues. It may be a different kind of leverage than the type of hard-ball negotiation that goes on between the major leagues and their players. For those of us who are just fans of the game, it is sort of a battle of millionaires and sometimes you don't know who to root for.

An advantage of the PBA facility requirement was it gave communities leverage—by virtue of the investment that they made,

each and every Member of Congress is now much more attuned to what minor league baseball is about. I don't believe for an instant that the major leagues will be able to walk away from my league and cancel player development contracts because the States of Vermont, Massachusetts, New York, and Pennsylvania have invested \$27 million in rehabilitating facilities. So, I think the process has, in part, brought stability. If they tried, I don't think Congress would let them get away with it.

Let me make a final point. I want to talk to you about people. Yes, it is a business, and you are the committee of this body that is concerned with small business. I grew up in a small business family. Minor league teams, the A level teams, 121 A level teams are definitely small businesses. In my league, for example, the off-season staff is about 2.5 people. During the season, the payroll will vary, but we will add 30 to 40 part- and full-time people. However, we are responsible for the leasing of 7,000 hotel rooms. These facilities the communities are spending money on are not just for the New York-Penn League—the movie theater analogy doesn't work that Professor Johnson used, because they are not just used for the New York-Penn League teams.

In my community of Utica—putting my landlord hat on, in my community of Utica, 130 games are played at our ball park. Only 38 of those games are a part of the New York-Penn schedule. The rest are American Legion teams, semiprofessional teams; each of these facilities is a community asset used by many local teams. So, minor league baseball, I think, does still epitomize that which is best about the game, and that which is best about small business.

In my league, 9 of the 14 owners are actual, full-time residents in their community, and you can find those owners at the ball park every game night, whether it is rolling the tarpaulin onto the field, or selling hot dogs or doing what needs to be done to make the team play.

Chairman LAFALCE. Thank you very much, Mr. Julian, for your excellent presentation. Our final witness today is a Professor of Law from Harvard Law School, Professor Paul Weiler.

**TESTIMONY OF PAUL C. WEILER, HENRY J. FRIENDLY  
PROFESSOR OF LAW, HARVARD UNIVERSITY**

Mr. WEILER. Thank you very much, Mr. Chairman, for the invitation. Usually when I am down here I am talking about problems of tort reform, malpractice reform or labor and employment reform. It is an awful lot more fun to be talking about sports and sports reform, and as a long-time fan and season ticket holder for the Boston Red Sox, it is especially a lot of fun to be talking about minor league baseball this year.

In the written statement that I did for you, I synopsized some of the legal background to the issue that is posed before us. I would be more than happy to field questions later on in discussion about some of the technical antitrust issues and some of the observations that have been made by the witnesses.

In these opening remarks, I would just like to underline one key point about baseball's antitrust exemption. At no time in the last century has either the Congress or the Supreme Court ever made an affirmative decision on the merits that baseball owners need or

that they deserve exemption of their business dealings, their off-the-field dealings, from any possible antitrust scrutiny. Baseball's unique dispensation from antitrust is the accidental by-product of legal history. Every court, every congressional committee that has considered the matter over the last several decades and expressed an opinion about it has found baseball's special status to be a legal aberration.

The problem is that the Congress initially expected in the early 1950's that the courts would correct the problem. But the courts, particularly the Supreme Court in a less well-known but crucial decision in its history, the George Toolson case from 1953, said it was Congress's responsibility to repair that judge-made anomaly.

Now, in the 1990's, unlike the early 1950's or even the early 1970's when the Curt Flood case was decided, it actually is a lot easier for the Congress to make that move. The reason is, we have experienced, and I think we have enjoyed, life in sports without the traditional owner control that underlay the antitrust exemption. Every one of the traditional systems of reserved systems on big league players was struck down in the mid-1970's, whether through antitrust rulings—in football, in basketball, in hockey—or by a rather fortuitous arbitration ruling in major league baseball.

Now, I think there are two important lessons that have been drawn by, I think, just about every neutral scholar that has considered these issues from that experience in these new legal worlds. The first lesson is that antitrust law is flexible; it is not rigid. When cases go to court, any complicated problems are disposed of not with what are called the automatic *per se* rules, but instead through a sensitive Rule of Reason inquiry, as it is called, about the kinds of market arrangements that will enhance the welfare of a business's several constituencies.

I mention in the paper that my former Harvard colleague and good friend and now the nominee to the Supreme Court, Steve Breyer, is one of the leading scholarly and judicial exponents of precisely that antitrust point of view.

But the vast majority of the time, parties in antitrust cases don't go to trial. Instead, they themselves negotiate settlements that respond typically in win/win fashion to the various interests affected by business practices. As you know, in the sports labor market, if there is an independent union representing the interests of players, the union can give a blanket of immunity to a league, and the NBA Players Association learned that just this week.

The practical significance, then, of removal by Congress of baseball's antitrust exemption is simply that the owners will no longer have a unilateral, final say about all of the rules of this country's game. Instead, baseball owners will have to be willing to adopt a reasonable enough position that will appeal either to the representatives of the other side, the other constituencies, or a neutral judge who has got no axe to grind on the subject. That is the first lesson.

The second lesson is that under the variety of rules—and they are flexible rules that we have seen over the last two decades—professional sports have flourished in unprecedented fashion. We all know how much players' salaries, big league player salaries, have soared over the last 20 years. So, also have owner franchise values. We know about the Baltimore Orioles, for example, a so-called larg-

er market team. A small market team, the Seattle Mariners, which was purchased for \$6.5 million in 1977, sold for \$106 million in 1992, up 16-fold in just 15 years.

The explanation for both of those economic trends is the same. Fan interest in baseball and other sports has grown phenomenally over the last two decades, reflected in gate attendance, television viewership, marketing and endorsement appeal.

Now, there has been one conspicuous exception to those legal and economic trends and that relates to the fate, particularly, of minor league baseball players. A little-noticed feature of the case that I mentioned as really the key case in this evolution, the Toolson case of 1953, is that George Toolson, unlike Curt Flood, for example, was a minor league player, a player whose career advancement had been blocked by the fact that he was stuck in the farm system of a New York Yankees team that was in the midst of winning five consecutive World Series, and Toolson was shuffled off on the Yankee chain.

He sued for freedom from that reserve system so that he might have a chance with another big league team that had a greater need for his talents. But as we know, neither the Supreme Court nor the Congress was ready to do anything for Toolson and his colleagues and successors and the Andy Messersmith arbitration in baseball freed only major league players from the traditional reserve system.

As good evidence as any, the impact of those restraints on minor league players comes again from salary numbers. In the early 1950's, when Toolson was decided, AAA minor leaguers, the highest level of minor leaguers, earned roughly one-quarter of the salaries paid to major league players. In the early 1990's, AAA players earned approximately one-fortieth the average salary of major league players. Not only has the current legal status of minor league players enhanced the revenues and the franchise values of the major league owners who employ them and pay them, it has actually also contributed to the escalation of major league players' salaries.

The vast majority of minor league players never make it to the big leagues; even those who do get basically a cup of coffee in the major leagues never get to the high salary levels that we all read about. The resulting artificially depressed market for minor league players has helped major league clubs pay for the \$7 million salaries that go to players in the major leagues like Barry Bonds and Frank Thomas' represented by Don Fehr's Major League Players Association.

I focused on minor league players as the most obvious victims of any absence of a free market inside baseball. There are some other consequences you have heard mentioned, for example, of the kind of control that the current system gives major leagues over minor leagues, in effect, the ability of major leagues to realistically threaten to strike their farm system players in 1990 to get a better deal from our fellow members of this panel in the minor league.

We have heard also about how major league control of this asset imposes costs on communities, tax dollars, on those communities that people would prefer not to pay in a freer market.

There is a further one that I just wanted to mention. The total control that the player development contract gives major league teams over the assignment of minor league players has this unfortunate impact on the quality of the game offered to minor league fans. Let me just give you this analogy.

Imagine if just before the NCAA playoffs were to begin this spring that the Milwaukee Bucks had reached into the Purdue Boilermaker's roster and taken Glenn Robinson off, or the Detroit Pistons had reached into the Duke Blue Devils team and taken Grant Hill off the roster, the country would have reacted with horror to that action; and yet that is precisely what my hometown Boston Red Sox regularly do to the Pawtucket Red Sox, their AAA farm team, whenever a member of their big league roster is injured or playing poorly.

Now, that owner prerogative, that major league owner prerogative may be good for major league fans, and it is, I am sure, good for minor league players, but it certainly detracts from the appeal, the integrity of minor league pennant races and playoffs offered to their fans.

Let me just say, in closing, we mentioned some of the problems; others have been mentioned. I don't mean to suggest that the solutions to those problems are all easy and obvious. I do want to underline, though, this final point about antitrust law.

The complexity of sports, just like the complexity of health care or computer software, for example, is not relevant to the question of whether baseball's special antitrust exemption should be repealed. The reason is, the whole point of antitrust law is to foster a free and competitive marketplace in which the parties themselves design innovative, often unexpected solutions to the needs of their customers, their workers, and their investors.

The single issue of economic policy and of legal principle posed for the Congress here is whether major league baseball owners should retain their unique prerogatives to write the rules of the game themselves; or should baseball owners, like those in every other sport—indeed, every other business in this country—have to persuade either affected parties or a neutral judge of the value, the reasonableness, of their position.

I can tell you that in the scholarly part of the sports world—neutral scholars, as I say—there is absolutely no doubt about the answer. The antitrust exemption should go.

[Mr. Weiler's statement may be found in the appendix.]

Chairman LAFALCE. Well, I thank you, Professor, and I thank all of the members of the panel for their uniformly excellent, but differing presentations. Before we get to questions from the committee, do any members of the panel have any comments that they wish to make about arguments raised by other panelists?

Mr. BRAND. If I could, Mr. Chairman, predictably, Marianne said that I would not agree with her legal interpretation of the existing contractual relationships. She cites to the uniform player contract.

We are not a party to the uniform player contract. We are a party on the professional baseball agreement, which is the agreement which controls the responsibilities major league baseball has to the national association.

In 1990, major league baseball proposed a provision that said, in the event of a national emergency, defined as a strike, lock-out, slow-down, the major leagues would have the right to suspend—either side would have the right to suspend play. The national association objected to that provision and it was withdrawn.

Separately, the PBA provides that the major leagues are obligated to supply skilled players to the minor league affiliate for the duration of their season. Were the major leagues to invoke whatever provision under the player contract, resulting in the inability of the minor league teams to operate, they would be in breach. The breach of the fulfillment of one contract could well then be the breach of another.

Last week on C-SPAN during his remarks to the National Press Club, Acting Commissioner Selig stated that that would not happen, that the major leagues would not attempt to shut down the minor leagues. To the contrary, the minor leagues have operated throughout previous work stoppages. So, I do want to put that position on the record for the committee to consider.

Chairman LAFALCE. I don't want there to be endless debate amongst the panelists, because the committee won't get an opportunity to ask questions, but I would give Ms. McGettigan an opportunity to respond.

Ms. MCGETTIGAN. Thank you very much. I would like to make just a couple of points. First, as I recall from my contracts class, if the four corners of the contract, the language within the four corners is clear, you don't go back to the history of arguments that went on when the contract was being formed.

Mr. Brand made reference to Mr. Selig's comments at the Press Club. The precise question asked him was whether the owners had the authority to halt play in the minors, and if so, would they exercise that power. My written testimony quotes his response from the official transcript which says, number one, I don't—the fact of the matter is, we have not stopped minor league baseball in past labor strikes and I am certainly we would not now. But I really am an optimist by nature and I really don't want to spend a lot of time talking about the horrible consequences that would happen.

The fact is, if he wanted to say he had no legal authority, he had the opportunity to do so and he did not.

Finally, Mr. Brand could straighten us all out either by getting 15 of the owners to sign a paper saying that they would not invoke this clause, or that it was superfluous language or have it stricken with the uniform player contract. It has been in the contract since 1990. Every single minor league player signs that language and, if it is not in the contract by its own terms, the contract is void.

Chairman LAFALCE. Let's go to questioning by the members of the committee. I have some conflicting feelings on the subject of the antitrust exemption. But before I discuss them, and as for your comments, let me try to clarify what Ms. McGettigan said were some conflicting sentiments on the part of minor league players—excuse me, minor league teams.

She said that the minor league teams, circa 1990, were either explicitly or implicitly advocating or suggesting repeal of the antitrust exemption. That certainly is not the case today. I am interested whether that in fact, was true in 1990? She also prognos-

ticates that the minor leagues may well be advocating or suggesting the possibility of repeal circa 1996 or 1997.

Does anybody wish to comment on that?

Ms. McGETTIGAN. I would be happy to inform the committee the basis of my comment in that regard. Among the material provided to the committee are excerpts of press coverage from the 1990 negotiations. One of the stories relates that Miles Wolf, who now operates the northern league, an independent minor league, who was then on the executive board of the professional baseball league, came to Capitol Hill seeking support for repeal of the exemption in his capacity as representative of the minor leagues. I believe Mr. Wolf would confirm that. We also have Senate staff who were approached by him who would be happy to confirm that.

Chairman LAFALCE. Well, let me put on the hat that all of us wear more than any other hat, and that is as representatives of the consumers, not of major league teams, not of minor league teams, not of players, but of consumers. In the minor league teams as I know them, the consumer can afford to go to a game, can afford to enjoy baseball is able to enjoy another alternative form of entertainment, family entertainment.

They might not be able to afford the hot dogs and popcorn, et cetera, associated with attendance to a game, but usually they can afford the admission. In contrast, the admission to a major league game seems to me to be increasingly out of reach, at least if you want a halfway decent seat where you can see what is going on.

I see the major league players' salaries escalating as they are in a great many other sports, in a way that seems to be to be out of control. I also see the cost of franchises of major league teams escalating out of control, where it is almost impossible to even contemplate purchasing a franchise today, because the costs have skyrocketed. So, if you did want to buy some franchise, who could afford it? If you did afford what the market seems to be assessing for these franchises, how could consumers afford to pay for those tickets? Is this a real problem?

Yes, Professor Weiler.

Mr. WEILER. It is a real problem. Let me just say, and I touched on it in a number of points in my statement that I passed over. First of all, from the point of view of labor economics, I think the first law of labor economics, as phrased by Albert Marshall 100 years ago is that the demand for labor is derived from the consumers' demand for the product of that labor. It is consumer demand.

When there is a lot of consumer demand, that generates higher prices, whether it is higher prices at the gate, higher prices in television rights. We saw the results of the competitive bidding process for the NFL television rights this past winter, and that in turn generates the kind of money that has escalated major league baseball salaries and salaries in other sports to unprecedented and, to my mind at least as a professor, ridiculous levels.

The source of that problem is the fact that every big-time sport in this country is a monopoly. There is no competition. There is competition on the television side, for example, for the right to show NFL games and the value that they put on NFL games as opposed to major league baseball games, we are seeing the results of that. But there isn't competition on the other side.



That is a problem that antitrust law, unfortunately, should be dealing with in sports; it hasn't dealt with it effectively in the sports that are governed by antitrust, partly because this Congress a number of years ago gave some exemptions to football and basketball and hockey, as well as the general exemption that has been enjoyed by baseball.

There was a comment made by somebody, the exemption that was given, for example, to the merger of the National Football and the American Football Leagues back in 1966. The exemption that is given to baseball as well as these other sports in the Sports Broadcasting Act.

Chairman LAFALCE. We have heard so much about baseball enjoying the only exemption for the antitrust laws. Now you are saying that this is only true with reference to a general exemption. The general exemption, I believe you said, really only applies to the relationship between the majors and the minors with respect to the players.

But you also are now saying that there is an exemption enjoyed by other professional sports teams under the antitrust laws. Could you explain that a bit?

Mr. WEILER. What happened in all of our big-time sports is that they gradually have evolved into monopolies that dominate the market in the entire country. In football, it happened in the mid-1960's.

Chairman LAFALCE. But is that by virtue of Federal antitrust law?

Mr. WEILER. A Federal amendment to the antitrust laws in 1966 that was passed by the Congress. The story is quite clear in the record, it was passed in return for football giving a franchise to New Orleans whose Senator Long was the key person in getting the bill through.

In the mid-1970's, the Justice Department and the players' associations in both hockey and in basketball, agreed to mergers of their competitors into a single league that dominates it, and in fact, the antitrust exemption that baseball has had since, explicitly since the early 1920's, was what enabled baseball to stop the competitive threat of the Continental Baseball League that Branch Rickey had mounted as a serious threat in the 1950's.

If there is any one thing that I think joins scholars—whether they are economists, lawyers in the sports world—it is the sense that the underlying problem here in driving up prices and, to some extent, detracting from the quality as well as the quantity offered to ordinary American fans, is the monopoly status of all of our big-time sports.

Chairman LAFALCE. I have a lot more questions, but I will defer to the members of the committee now.

Mr. Knollenberg.

Mr. KNOLLENBERG. Thank you, Mr. Chairman.

I particularly want to thank you because you got a monolithic group in front of us here today. But I think that is a big, big plus. I noticed there is some divided opinion. I want to talk a little bit about that, because I am a baseball fan, a fan of both minor league and major league baseball, I, in representing the views of my con-

stituents, I think their concern is that they want to go on and enjoy the game and enjoy it at the local level.

Now, some of you feel that this game is headed for the door. Some of you feel that the health of the minor league baseball industry, if you will, is on the sick side. Some of you think it is not broken. Mr. O'Conner, you made a comment about the fact that you thought it was fine, leave it the way it is. I think half of you are on one side of the fence and half on the other.

Let me just direct—and by the way, this is a comment I think Mr. O'Conner that you made—if you didn't make it, it is in your testimony—about the fact that if we lifted the exemption, that something like only about 10 percent of the minor league teams in existence would survive.

Would you care to comment about that?

Mr. O'CONNOR. Well, the premise of that is that you take the economics and the finances and—

Chairman LAFALCE. Can you turn the microphone around?

Mr. O'CONNOR. If you take the situation now and freeze it in time and infuse into that the cost of a non-PBA relationship with the major leagues, there is about 8 percent of the clubs that today are showing on paper the ability to absorb those additional costs, in players and scouting, and in managers.

Mr. KNOLLENBERG. Those are the very costs in fact, that would not be picked up as they currently are if they lifted the exemption.

Mr. O'CONNOR. If they lifted the exemption and you follow the supposition that certain things would not happen as they are happening now with regards to the major league-minor league relationship, namely the PBA at its current levels.

Mr. KNOLLENBERG. Dr. Johnson, do you want to respond? Again, just to focus on the health of the minor league system. Is it going to continue? Is it going to die?

Mr. JOHNSON. I think the thrust of my comments, I think, were directed at what major league baseball may do and the consequences of that. Major league baseball as I read the testimony before various congressional committees, the argument is that without the antitrust exemption, everything is going to go—

Mr. KNOLLENBERG. Go where?

Mr. JOHNSON. Down the drain without the exemption.

Mr. KNOLLENBERG. It is going to die?

Mr. JOHNSON. Without the exemption. However, I think there are alternative scenarios, and I don't think anyone knows what is going to happen to minor league baseball if the exemption is repealed. My written testimony gets to that on page 8.

There are alternative scenarios. Perhaps the cost of operating minor league baseball will go up quite a bit and many of the current owners who are really business people. They are not—minor league baseball, when you are an only team, you are not in the baseball business. You have no control over what happens on the field. You don't own the players. You don't go out and scout, you don't draft. You are not in the baseball business. You are in the business of entertainment.

Mr. KNOLLENBERG. Is that bad?

Mr. JOHNSON. No, no, not at all. But if operations changed as a result of repeal, you may get some owners who want out. They

don't see themselves as baseball people and they may not want to operate under those conditions. I suspect, though, you will find a large number of people who may want to get in. So, there will be a change of ownership and you will have operators who will be able to operate under new conditions. I think there are a number of different alternatives.

I think it was Mr. Brand's testimony, I may be wrong, that two-thirds of the minor league teams are profitable by—I suspect that most minor league teams operate at a very small margin of profit.

Mr. KNOLLENBERG. Would you, Mr. Brand?

Mr. BRAND. The only thing I would say is that since we are before the Small Business Committee, one thing that I think small businessmen like is stability. I think the notion that they could be overwhelmed in a tidal wave of change for the theoretical possibility that the antitrust laws will shake out in a way that provides them equal or greater opportunities is not a comforting thing to small businessmen.

There may be a separate group of small businessmen who emerge in some manner, shape, or form. It may not be the same small businessmen, and it may not be in the towns and cities that have teams today. That is the uncertainty perhaps—

Mr. KNOLLENBERG. But that is not necessarily bad.

Mr. BRAND. Not necessarily bad.

Mr. KNOLLENBERG. That is the environment that we live in in small business—I happen to be a former small businessperson for some 30 years. So, you are saying that that is not bad.

Mr. BRAND. Not necessarily. It can be dislocating for those towns and communities, and we could wind up with a vastly changed system where we don't have as much product as we have today, and I think that is antithetical to what I understood from law school the purposes of the antitrust laws, which is to increase the availability of product.

So I would agree with Mr. Johnson, we don't know. I think there is a tremendous risk in upsetting the apple cart without knowing better what could happen, and quite frankly, I think the burden is on the people who want to change it, not on the people who want to preserve it.

Mr. KNOLLENBERG. Let me speak to the burden of the people who want to change it, because there are people who do. But who are those people? Who are those organizations that want to change it? I know something about those that want to keep it the way it is. Who are those people? I recognize some of you have a vested interest.

But aside from the obvious, particular vested interest, who are those people? Anybody?

Mr. BRAND. I only know of one.

Mr. KNOLLENBERG. Who is that?

Mr. BRAND. Well, the players.

Mr. KNOLLENBERG. Just for the record.

Mr. BRAND. The players, as evidenced by their positions in the Congress in the last 2 years.

Mr. KNOLLENBERG. Who else? Anybody? Over here.

Mr. WEILER. As I said earlier, among the scholarly community, the people who are analyzing this from a neutral perspective not

representing any particular group or constituency, there is a strong consensus that the current system is totally unjustified, is not—

Chairman LAFALCE. That does not mean that there is a unanimity of perspective between the scholarly community and the major league baseball players, because it seems to me the players are not concerned at all about the escalating salaries, whereas the scholarly community is concerned about the escalating salaries. So, while there may be a marriage on some issues, there is a huge gap or even divorce on other issues. So, I just don't want the suggestion to remain.

Mr. KNOLLENBERG. Just to respond to you, Mr. Chairman, if it is the scholarly community that has the concern, I recognize it is obviously well thought out, but does it represent enough of the pie to make a case?

Mr. WEILER. The scholarly community offers its views about what is sensible public policy. It may not have huge political constituencies behind it, but we are offering that view. There are some serious problems. I think—I just wanted to add, I just wanted to say one thing about what was mentioned earlier, that a concern that if we take away from baseball its unique antitrust exemption, we suddenly will ruin minor league baseball, we create instability.

If you look back, as scholars have done, at the history of minor league baseball, there have been several fundamental transformations that have already taken place. There was a transformation that took place in the 1920's and early 1930's when the farm system was first developed, an independent minor league teams—

Mr. KNOLLENBERG. If I could interrupt you, though, the fact is that this isn't the 1920's, it isn't the 1930's, it is the 1990's and things have changed a great deal. They have changed since the 1970's. So, I would suggest to you that maybe that argument would carry water somewhere, but it doesn't carry as it would here today.

Mr. WEILER. If I could just—we had a change in the 1920's and 1930's, we had another fundamental change in the 1960's. Those changes were basically made by a small group of major league baseball owners deciding what was in their interests, as they are entitled to do under antitrust. So, the current situation of minor league baseball depends on whether major league owners feel it will be in their interest over the next decade, the next 20 or 30 years, to continue the status quo.

Chairman LAFALCE. All right. The time of the gentleman has expired.

Mr. Hilliard, did you have any questions?

Mr. HILLIARD. No. Thank you, Mr. Chairman.

Chairman LAFALCE. Mr. Portman, do you have any questions?

Mr. KNOLLENBERG. Thank you. Thank you very much for your comments.

Mr. PORTMAN. Thank you, Mr. Chairman. It has been very interesting. I wish I could have been here for the entire testimony.

Two quick questions. Number one, perhaps the answer will not be so quick, with regard to the rule of reason. Professor Weiler, I happen to be a Cincinnati Reds fans, so I am very happy to talk about major league baseball here today.

But with regard to the minor leagues, could we get a response from some of the panelists as to why—perhaps Mr. Brand could respond—you believe the rule of reason would not be an appropriate analysis to bring to bear on these issues?

Mr. BRAND. It could well be. I don't know how many minor league owners there are who could litigate a rule of reason case in Federal district court today on the profit margins that they have and who would opt into a system like that. It could well be that a court would say that a reserve clause of 4 years is reasonable. Another court could say, only 2 years is reasonable. We could have that appeal to the Court of Appeals and maybe to the Supreme Court.

What I am suggesting is, litigation alternative for most of the minor league clubs that I know is not a very attractive one. You are going to have to have somebody with the wherewithal to undertake that kind of a case.

Mr. PORTMAN. OK. Any other responses?

Ms. MCGETTIGAN. Yes. I would point out that every small business in America has to worry about the potential for litigation under the antitrust laws and they live with it quite well; whether you are a dry cleaner, a baker or a minor league team, you behave according to what you think is action that will not be found to be unreasonably anticompetitive.

Mr. PORTMAN. We could get into a reform of the legal system here as well.

Mr. JULIAN. My only response to that is, I don't think there is any other small business in America today that presently has so much at stake as it pertains to the existing statutory law regarding antitrust. In my league, a short season A league, the New York-Penn league, the amount of money the major leagues provide for player salaries and the other provisions of the PBA equals most team's operating budget. So, to take that away creates more than just a minor risk.

Mr. PORTMAN. That is a good segue into my second question, Mr. Chairman, which is the 1990 agreement between the majors and minors. It is my understanding that one of the reasons that the minor league teams have a tough time, that there are certain requirements in that agreement as to stadium improvements in particular, which sound a little bit like our unfunded Federal mandates in the sense that they may not make sense and that there is not a lot of flexibility, and yet the leagues have to comply. Is there any response to that?

If you didn't have the antitrust exemption, perhaps that agreement would not be valid, and therefore, you would have more flexibility and more freedom to actually make a profit rather than just have your revenues met.

Mr. JULIAN. Again, as one of those in the trenches, I don't think that there is very much of a relationship between the antitrust exemption and that requirement. That requirement I believe as a minor league president was borne out of years of atrophy. The minor league teams and their landlords just simply did not take care of their ball parks. That is a straight-up answer.

Mr. PORTMAN. Any other responses to that?

Ms. MCGETTIGAN. I would like to respond, and perhaps Professor Weiler is the expert on this. But it seems to me that if, to use my favorite example, one of the requirements on stadium improvements relates to purse shelves in women's bathrooms, I don't think that is crucial to playing of minor league baseball.

If the antitrust laws applied and improvements were made in the stadiums so that it was—there was no question that players could play adequately, they wouldn't get hurt, they had adequate locker facilities and exercise equipment, et cetera, and one major league team said that is not good enough, the antitrust laws apply, the city or town could go to another major league team and say, is it good enough for you? They have 28 teams saying, if you don't do all of these things, none of us will locate in your town, and I think antitrust laws would address that issue.

Mr. PORTMAN. Any other responses?

Mr. O'CONNOR. Just quickly, with regards to the facilities, I think it is important to recognize that it is not 14 sections of mandates. There are recommendations as well as requirements. I think the requirements center around player safety and the ability to develop the players and protect the value of the players and their safety and comfort.

The balance of them, with regards to purse shelves and parking spaces, while they may be dictated by local code, there is a vast majority of the facility standards that is centered around a recommendation, and it is also important to realize that there is a difference between an existing facility and a new facility with regards to the number of sections that you have to comply with within the facility standards.

Mr. PORTMAN. Thank you.

Chairman LAFALCE. I am afraid that will have to bring it to a close. We have a vote going on, so I think we are going to have to conclude. But before we conclude, let me just make a few observations.

First of all, I regret that our discussion seems to have focused almost exclusively on the issue of whether to repeal or not repeal the antitrust exemption. I think what we need to do is examine what the problems and potential of baseball are and then try to assess how we can best deal with both those problems and the potential. But a good amount of the discussion has been on the subject of repeal. That too is unfortunate, because it presents it as a black and white issue: Either there must be a total repeal of the antitrust exemption, or there must be some total exemption. Of course there is a lot of territory in-between. People speak of the need for repeal of McFadden-Douglas, but even then they say there must be certain exemptions, rather than total repeal. Even the most ardent advocates would call for certain exemptions.

I am concerned about this issue from the perspective of the small businesses that are minor league teams as well as the small businesses that rely on these minor league teams. I am also concerned from the perspective of the consumer. From both of those perspectives, I tentatively come to the conclusion that there is great imbalance in the relationship between major league teams and minor league teams.

Very often, the minor league teams have little bargaining power with the major league teams. They are almost victims of it. In a sense, we almost need a Bill of Rights for minor league teams similar to what I have proposed as a Bill of Rights for franchisees for their very unbalanced relationship with franchisors.

I am also concerned that while there are tremendous tensions between major league owners and major league players, the consumer gets lost in that tension. So, the major league teams want to do everything humanly possible to enhance the value of their franchise. I understand that. The major league players want to do everything humanly possible to enhance their average salary. I also understand that.

But we must make baseball available to the consumer. I don't know that there is adequate consideration given to that. I think we have to consider this when we explore the issue of Federal law, and in particular antitrust law, although I don't know that we should confine it to antitrust law. We do have some Federal statutes dealing with specific franchise relationships. We have Federal statutes dealing with automobile franchise relationships. We have a Federal statute dealing with a few other distinct relationships, such as gasoline dealers.

It seems to me that we should be thinking first and foremost of the consumer and then, second, of trying to bring about some type of appropriate balance between the minors and the major leagues. We must avoid making consumers victims of the negotiations between the major league players and the major league teams.

I don't know how this should be done. I know that is my perspective. I believe this is the appropriate perspective to have, but how we should resolve that is still very, very uncertain in my mind. But I want to thank every member of the panel for shedding tremendous light on this problem. I think if we read and reread the transcript of this hearing, we probably will hear just about every argument that could be raised on every side of the issue, and to that extent I think we have served the public interest.

I thank you very much.

[Whereupon, at 12 p.m., the committee was adjourned, subject to the call of the chair.]

# APPENDIX

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Statement of

REP. JOHN J. LaFALCE, CHAIRMAN

COMMITTEE ON SMALL BUSINESS  
U.S. HOUSE OF REPRESENTATIVES

Hearing on

KEY ISSUES CONFRONTING MINOR LEAGUE BASEBALL

July 20, 1994

We read a great deal about the problems of major league baseball, of declining public interest, falling revenues, obstinate owners and over-paid players. In truth, to paraphrase Mark Twain, the reports of the demise of baseball in America are "greatly exaggerated". Baseball appears to be well and alive in much the same form that it has always existed in minor league ball parks across the nation.

While most professional sports in America can be aptly described as big business, an important small business segment continues to flourish in baseball's minor leagues. Minor league teams are found in more than 170 cities and towns across the country. For most of these communities minor league teams represent a valuable source of local revenue and public entertainment. Minor league teams generally play in small stadiums, are run by small business people and operate with few full-time staff and limited budgets.

Many minor league teams have emerged as examples of small business "all stars", overcoming adverse market and economic conditions with innovative marketing and management initiatives. Despite growing competition from other professional sports, rising costs, popular dissatisfaction with major league baseball and a changing, often troubled relationship with their major league teams, many minor league teams are flourishing. More than 30 million people attended minor league games in 1993, double the attendance figures of ten years ago.

But there is concern that the increasing legal and financial controversies of major league baseball may adversely affect minor league team operations. The legal and financial relationship between major league and minor league baseball teams has changed significantly in recent years, with new controls and greater financial obligations imposed on minor league team owners. Revenues available to major league teams from television contracts and other sources to support minor league operations have been declining. Congress is considering possible repeal of the 70-year-old antitrust exemption for major league baseball. And a prolonged strike by major league baseball players appears a likely possibility.



A major uncertainty for many minor league teams is the potential impact on the minor leagues of possible Congressional repeal of baseball's antitrust exemption. While many of the arguments on both sides of the issue of repeal appear more emotional than legal, a very real concern is raised by the argument that repeal could have devastating consequences for minor league baseball. But the exact nature and source of these consequences remain unclear.

At the heart of the antitrust exemption issue, and a key feature of the major league-minor league relationship, is baseball's player reserve system. Under the reserve system players are allocated to specific major league teams by means of the amateur draft. Each team reserves an exclusive right to negotiate with and control players in their minor league structure for a period of up to seven years. If a player advances to the major leagues, this control may extend over a longer period before the player has the right to negotiate with another team.

This exclusive long-term control of players enables major league teams to restrict player salary costs and to make large numbers of talented players available at the minor league level. If the antitrust exemption were to be repealed, however, the amateur draft and standard players reserve clause contract could become subject to antitrust suits by players which, if successful, could disrupt baseball's player control structure that provides players and financial support to minor league teams. Similar issues relating to control of players and players' salaries are at the center of current negotiations between major league owners and players that could bring a major league players strike this summer.

The purpose of today's hearing is to highlight minor league baseball teams as important small businesses, to investigate the relationships between major league and minor league teams and to assess the potential impact of key legal and financial issues on minor league team operations. In particular, the Committee has sought testimony from varying perspectives on the likely impact on the minor leagues of Congressional repeal of baseball's antitrust exemption, of growing labor problems and a possible strike by major league players, of possible renegotiation of the legal relationship between major league and minor league teams, and related issues.

Minor league baseball teams are important American institutions and excellent examples of creative, entrepreneurial small business. We are pleased to have with us today a very capable panel of witnesses with divergent viewpoints to discuss the key issues confronting minor league teams and the future of minor league baseball.

STATEMENT OF  
REP. JAN MEYERS (R-KS)  
RANKING REPUBLICAN  
COMMITTEE ON SMALL BUSINESS  
JULY 20, 1994  
"ISSUES CONFRONTING MINOR LEAGUE BASEBALL"

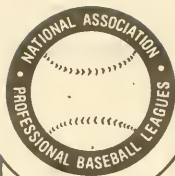
Thank you Mr. Chairman.

At the outset, I must admit that I have never really thought of minor league baseball as an industry composed of small businesses. Rather, I have thought of the minor leagues as an adjunct of major league baseball. To me it seems that in many ways major league baseball and the minor leagues operate in concert as a single enterprise. They are different ends of a single system which flourishes by exchanging valuable tangibles and intangibles. For example, the minor leagues have sacrificed the ability to offer a competitive product in exchange for talented players supplied by the majors. This is but one example of the interdependence of major league

baseball and the minor leagues.

I look forward to today's hearing and appreciate the distinguished panel of witnesses who are appearing before us today. As a life long fan of "America's game," I look forward to learning more about the legal and financial issues involved in keeping professional baseball healthy. PLAY BALL!

NATIONAL ASSOCIATION  
of  
PROFESSIONAL BASEBALL LEAGUES, INC.



July 19, 1994

STANLEY M. BRAND  
Vice President

VIA HAND-DELIVERY

The Honorable John J. LaFalce  
Chairman  
Committee on Small Business  
2361 Rayburn House Office Building  
Washington, D.C. 20515-6315  
Attn: Mr. Dean Sagar

Dear Mr. Chairman:

I am enclosing previous testimony I have provided concerning minor league issues. The first occurred before the New York State Senate Committee on Tourism, Recreation and Sports Development on February 9, 1993 in connection with a hearing on facility standards. The second occurred before the Subcommittee on Economic and Commercial Law of the House Committee on the Judiciary on March 31, 1993 specifically on the issue of repeal of baseball's antitrust exemption.

We appreciate the unique focus on small business issues affecting minor league baseball which your Committee can provide. Taken together, the attached prepared statements (which I ask you to make part of the hearing record), provide what I believe is necessary background information for the Committee to consider in connection with its deliberations.

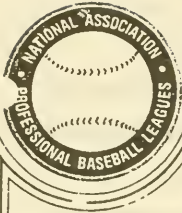
I look forward to appearing to supplement that background and to address any other issues that arise.

Sincerely,

*Stan Brand*  
Stanley M. Brand

SMB:mob  
Enclosures

NATIONAL ASSOCIATION  
of  
PROFESSIONAL BASEBALL LEAGUES, INC.



STANLEY M. BRAND  
Special Counsel to the President

STATEMENT BY STAN BRAND  
VICE PRESIDENT  
NATIONAL ASSOCIATION OF PROFESSIONAL  
BASEBALL LEAGUES, INC.

BEFORE THE NEW YORK STATE SENATE COMMITTEE  
ON TOURISM, RECREATION AND SPORTS DEVELOPMENT

FEBRUARY 9, 1993  
ALBANY, NEW YORK

Mr. Chairman and Members of the Committee:

As Vice President of the National Association of Professional Baseball Leagues, Inc., -- the governing body of minor league baseball -- I am pleased to be here to address the important issues identified in your notice of hearing. The National Association, founded in 1901, represents 17 domestic leagues in 175 cities playing professional baseball throughout the United States and Canada at the AAA, AA, A and rookie levels. Although closely tied to Major League Baseball ("MLB"), with a few exceptions it is not owned by the major leagues or their clubs. Rather, the NA represents an industry consisting of small businesses owned principally by entrepreneurs who share a common love for the game as it was played in simpler times -- before billion dollar TV contracts, million dollar players and synthetic stadia. We in minor league baseball accept and understand the special trust we hold with our fans, our communities and their representatives.

By way briefly of background, I am not a professional baseball man; I came to the NA oddly enough after nearly 12 years in the Congress as legislative assistant to then Majority Leader, later Speaker, Tip O'Neill, as general counsel to the United States House of Representatives, and then as a founder of a Washington based law firm specializing in public official and white collar defense. I have, therefore, a special appreciation for the role of the legislative branch and the important

constitutional function it performs in overseeing the public fisc.

In 1991, I ran for President of the NA and have served as special counsel and Vice President for the NA under President Mike Moore. As a recognition of the growing need to interact constructively and cooperatively with government at all levels, particularly on the issue of facility standards, President Moore assigned to me in January 1992 the responsibility to assist our clubs and leagues in meeting new facility standards and coordinating our efforts with state and local governments.

First, before addressing the specific questions raised in the notice of public hearing, I can tell you that these same questions are on our minds and have been extensively discussed and debated within our own councils and meetings.

In this regard, we are grappling with the issue of club mobility and the appropriate expectation by government that with the commitment of public funds comes a responsibility to insure stability. Some movement is inevitable where, for example, the Major Leagues draft a territory for expansion, requiring the minor league club to relocate (this happened this year but represented a net gain to a community -- in this case New Orleans -- which had been a minor league city). In other cases, the locality has been able to replace the lost team with another team of a different classification.

NA clubs have begun to negotiate longer term lease arrangements with communities that invest in new and improved

ball parks to protect the community at least through the amortization phase of the project. We are committed to continuing to explore ways to protect government investment in facilities. Our record on commitment to communities is, I believe, excellent and that is the way we want it. We also regard the Professional Baseball Agreement's ("PBA") facility standards as a clear indication of MLB's long term commitment to the minors.

The Committee has asked whether public financing of minor league stadia contribute to an area's economic development and whether these facilities can be justified as a wise investment. I believe the answer to both these questions is undoubtedly yes.

Minor league clubs generate substantial revenue through ticket sales, concessions, parking, merchandising, advertising and hotel and restaurant businesses. Of course, the community incurs certain costs and liabilities to accommodate these teams. While comprehensive cost benefit analysis is difficult and will vary by area, almost all the experts agree that on the whole clubs contribute a net economic benefit to the community. The NA does have studies which estimate the economic multiplier effect on the business activity and revenue generated as dollars are "re-spent" throughout the local community, which can be significant depending on the size of the location and the diversity of the industrial and commercial base of its population.



A 1992 NA survey also revealed that the minor leagues provided employment for more than 8,800 people (not including the 5,000 ballplayers), donated more than \$1.7 million to local charities and civic organizations and contributed 38,000 hours to 5,400 community and charitable events. That, I believe, is a significant economic contribution.

Finally, the wisdom of the investment should not be measured solely in pure economic terms, anymore than we measure the desirability of other public works projects exclusively by that means. Communities that invest in stadia generate civic pride, project a positive image and create anchors for other business activity -- all results that cannot be econometrically gauged but make the investments wise.

The committee has also asked whether anticipated lower broadcast revenues, higher salaries and other costs at the major league level will force cutbacks on their support of minor league teams.

The PBA negotiated in 1990 redefined our economic relationship with MLE, in our view at least, in a fundamental way. With the new PBA, MLB ended payment of "special consideration", or financial support, to the minors which had historically been premised on the loss of minor league revenue occasioned by major league broadcasts into minor league home territories. In addition to that loss of support, the PBA mandated that the NA render cash contributions to MLB based on a percentage of ticket revenue beginning in 1991 in the sum of

\$750,000, a guaranteed \$1.5 million in 1992 and \$1.75 million in 1993. While MLB previously picked up all salary and equipment costs, triple A clubs now pay all travel costs for a maximum of 29 people on each road trip, and at the double-A level for 27 people.

As President Moore reported in his "state of the minors" speech at the Baseball Winter Meetings in Louisville last December, in addition to the \$1.9 million 1992 NA payment to MLB, Major League Baseball Properties will get between \$250,000 and \$500,000 from licensing minor league merchandise and the minor leagues spent \$13 million on team related expenses that formerly were paid by major league clubs. For many NA teams operating at the rookie or class A level on thin margins, this represents a sizable financial contribution. Quite frankly, I do not know whether the minor leagues can achieve any further meaningful cuts of the magnitude which would seriously impact MLB. With average player salaries over \$1 million in 1993, it is difficult to see how additional material savings at the minor league levels can be made.

The former Commissioner used to refer to a figure of \$200 million dollars in describing major league player development costs, but I must point out that the figure includes many items not specifically attributable to operating a minor league club, including \$30 million in signing bonuses, and millions in scouting costs.

We in the minor leagues do appreciate the cost squeeze in which our major league partners find themselves, and we are looking for additional ways to save money, but we simply can't expect the small businesses we operate to absorb more of the savings than is reasonable.

From the MLB perspective, the major restructuring of the PBA in 1990, with its direct payments from the NA for the first time in the relationship adjusts what could have been viewed as an imbalance in the financial underpinnings of the minor leagues. Given the relative stability the PBA has afforded our industry over the past 3 years, and the financial imbalances it corrects, we do not foresee the need to reopen the PBA prior to the expiration of its full term.

In this connection, we in the minor leagues, and many major league player development people, do not view college baseball as a replacement for lower classification minor league baseball. Technical differences (e.g., metal bats), coaching styles and simulation of playing conditions (including, much shorter seasons) simply prevent college baseball from assuming that role. Perhaps more importantly, replacing the minor leagues with college baseball heightens, not lessens, the erosion of amateurism and exposes baseball to the same criticism of creeping professionalism and money in college athletics that has blemished college football and basketball.

The NCAA has adopted rules that limit collegiate schedules to 56 games per year (as opposed to the 140 game schedule played

in the minors) and that limit practice to 20 hours per week for "athletically related activities." Colleges ought to continue to concentrate on developing major league doctors, scientists and educators rather than major league ballplayers.

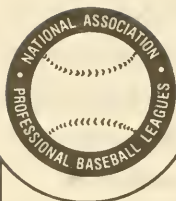
Recently, the Congress has directed its attention to the federal antitrust exemption for baseball. Witness after witness, from former Commissioner Vincent to economists, to local mayors called for repeal as the panacea to baseball's woes. Conspicuously absent was any meaningful appreciation of the drastic and severe impact which repeal might have on minor league baseball. Repeal might disturb or alter the very structure of minor league baseball, threatening baseball in smaller communities particularly at the lower classifications. As former Deputy Commissioner Greenberg stated recently "Over 170 communities enjoy minor league baseball. Tinkering with [the exemption] would almost certainly mean the elimination of a great number of teams." Without territorial protection and the ability to structure its relationship with MLB, minor league baseball simply would not exist as we know it. MLB and the NA operate in concert as a single enterprise, exchanging values -- the minor leagues have sacrificed their ability to offer a competitive product in exchange for players supplied by the majors. Disturbing the exemption could unalterably affect the viability of the minors.

The issue of minority hiring and advancement in minor league management is a critical one for the NA. We have addressed it in

a number of ways: 1) organizing and conducting job fairs at the annual Winter Meetings where we seek minority applicants; 2) working with ownership to hire and advance minority employees at all levels of management. Quite frankly, we need to do more on this front and we are expanding our efforts in this regard. Following meetings and discussions with Rev. Jesse Jackson and his staff in Louisville in December we have initiated a program designed to more aggressively seek and place minority candidates into minor league management positions.

In addition, the former president of the NA, Sal Artiaga founded the National Association of Professional Baseball Leagues Sports Administration Grant Program in 1990, a not for profit corporation established with a grant from Anheuser-Busch designed to recruit and subsidize minority employment with clubs. This program was funded through 1991 only and we are now seeking funds to renew its operation as a permanent element of the NA minority hiring program.

**NATIONAL ASSOCIATION  
of  
PROFESSIONAL BASEBALL LEAGUES, INC.**



STANLEY M. BRAND  
Vice President

TESTIMONY OF STAN BRAND  
VICE PRESIDENT  
NATIONAL ASSOCIATION OF PROFESSIONAL  
BASEBALL LEAGUES, INC.

Before the Subcommittee on Economic and Commercial Law  
of the House Committee on the Judiciary

As Vice President of the National Association of Professional Baseball Leagues, Inc., I am pleased to appear before the Subcommittee to address the issue of baseball's antitrust exemption and particularly its relationship to and impact on the minor leagues. The National Association of Professional Baseball Leagues, Inc., is the governing body of minor league baseball. It was founded in 1901 and is comprised of over 170 teams in 17 leagues playing professional baseball in communities in the United States and Canada at the AAA, AA, A and rookie levels.

First, I must comment on the historical antecedents of this hearing today. The antitrust exemption has been a threatened weapon against baseball for 70 years since the 1922 Federal Baseball decision which spawned its birth. Despite consideration of the issue by Congress in 1951 and throughout that decade, again in 1961 and in 1976, the exemption remains in force today. As Professor Gary Roberts has pointed out compellingly in his

testimony before the Senate Subcommittee on Antitrust and Monopolies, there is little reason to believe that repeal of the exemption will magically remedy the perceived ills of the game. To the contrary, as he has stated: ". . .the application of antitrust law to these other major sports [football, basketball, hockey] over the years by the federal courts have been inconsistent, often unjustifiable and generally counterproductive. Subjecting baseball to the vagaries of this confusing enforcement process cannot predictably result in benefits to the public interest." As to the impact which repeal might have on the minors, Mr. Roberts did state that it might disturb or alter "in unpredictable ways" the structure, and therefore, the viability of minor league baseball, including the elimination of Class A baseball.

I am not an economist or an antitrust expert and so I cannot tell you precisely what will happen to minor league baseball if the exemption is repealed. I will tell you that the threat of repeal casts a dark cloud of uncertainty and possible doom over much of minor league baseball, particularly at the lower classifications. The cloud extends over communities and fans whose only chance to see live professional baseball, either because of geography, cost or convenience is at the minor league level. Last year, in excess of 25 million Americans attended minor league games. Given the precarious and fragile economic underpinnings of many minor league clubs, which operate as small businesses at narrow profit margins, anything that is likely to

disturb the delicate economic balance between Major League Baseball and the minor leagues -- as repeal will likely do -- will undoubtedly threaten the existence of many minor league clubs. As one witness who appeared before the Senate Antitrust Subcommittee, Andrew Zimbalist (the author of Baseball and Billions, has analyzed the economic vitality of minor league baseball:

...although roughly two thirds of minor league teams earned a profit in 1992, there are probably no more than a half dozen that earned a double digit rate of return. Generally, there do not appear to be monopoly profits in the minor leagues.<sup>1</sup>

Also conspicuously absent from the debate is any meaningful understanding of one historic rationale for preserving the exemption: the existence of the geographically diverse and small town dominated minor league clubs playing baseball in 170 American and Canadian venues. No other professional sport exhibits its product in this manner -- not only exposing millions of fans to live baseball in an affordable and intimate way, but generating interest in the game at the grassroots.

The disappearance of a large number of minor league teams would also produce a domino effect on the communities in which they play: investments in stadiums would be jeopardized, economic stimulation and support generated by these teams would be

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<sup>1</sup> Testimony before the New York State Senate Committee on Tourism, Recreation and Sports Development (Feb. 9, 1993).



curtailed, and millions of fans would lose access to affordable and enjoyable professional baseball.

According to a 1989 survey by the International City Management Association of host minor league communities, 61 communities reported making stadium renovations since 1980, and more than half of these were made between 1987 and 1989. In 1988 9 new stadiums were opened, 4 new stadiums were completed in 1989 and 3 were completed in 1990. These communities have invested heavily in stadia and infrastructure, building and renovating these facilities utilizing public financing. The threat posed by repeal to minor league baseball is also a threat to the investments made by these communities.

Unlike our major league partners, there are several truly community owned minor league teams whose owners -- stockholding fans who invested to keep minor league baseball in their communities -- could lose not only their teams but their investments should the most dire consequences of repeal come to pass. (Indianapolis, Rochester, Toledo and Scranton/Wilkes Barre are examples of community owned teams.)

One could argue that one of the principal benefits of minor league baseball is to bring the game of organized baseball to small town and rural America; indeed, that is what has made baseball the national pastime.

Mr. Solomon has accurately and dramatically explained how the repeal of the exemption might alter the economic relationship between Major League Baseball and the minors through the

intricate rules set forth in the PBA. It might also radically alter the relationships among minor league clubs within the National Association Agreement which governs minor league baseball. For example, the National Association Agreement sets forth rules of territoriality governing minor league club location, even apart from those rules that govern territorial issues between Major League Baseball and the National Association. For example, the National Association Agreement defines a club's territory in a manner which provides a reasonable market in which that club may operate. Repeal of the exemption might, depending on the facts and circumstances, practically inhibit or limit the National Association's ability to define territory, thus jeopardizing a geographic area's ability to have minor league baseball at all.

During spring and summer nights across small town and rural America -- in places like Utica, New York; Burlington, Iowa; Albany, Georgia; Bend, Oregon -- to name only a few -- minor league teams play before fans who paid as little as \$2.00 to enter the park, who can still buy \$1.00 hotdogs and get autographs from journeyman players only too happy to sign them for free.

At key junctures in minor league history, the minors gave up its ability to offer a competitive product in exchange for players supplied by the majors, but the beneficiary of this exchange of values between major and minor leagues have been the millions of fans exposed to professional baseball in an intimate,

affordable and wholesome environment. We have been loyal to and considerate of our fans and our trusteeship of the game is a record we are proud of. Before you alter the basic structure of professional baseball at all levels through repeal of the exemption, please assure yourselves that the brave new world which will be created will indeed be better for the fan than the one it replaces.

## MINOR LEAGUE BASEBALL: FACT VERSUS MYTH

Arthur T. Johnson\*

Even though minor league baseball operates in more than 150 American communities in 38 states (as well as in Canada and Mexico), the structure and economics of the business of minor league baseball are little understood. Instead, nostalgia and myth often surround discussions of minor league baseball.

This paper presents a factual description of minor league baseball and its relationship to the Major League Baseball and to American communities that support minor league teams.

## GOVERNANCE OF MINOR LEAGUE BASEBALL: THE 1990 PROFESSIONAL BASEBALL AGREEMENT

The minor leagues are organized according to the level of the players' skills. Leagues are classified, from highest to lowest: AAA (4 leagues including the Mexican League), AA (3 leagues), A (7 leagues), and Rookie (5 leagues including two complex-based leagues and a summer league in the Dominican Republic).

The National Association of Professional Baseball Leagues governs these nineteen professional baseball leagues. Each league has its own officers, who manage their league's affairs under the jurisdiction of their league's by-laws, the National Association Agreement and the Professional Baseball Agreement (PBA).

The PBA governs the relationship between the major leagues and the minor leagues as well as certain specified actions of minor league clubs, the minor leagues and their governing body. It defines the Player Development Contract (PDC), which identifies the obligations of a major league team and its affiliate minor league teams, including responsibility for player salaries, player assignments, travel and per-diem expenses, uniforms and equipment, and the manner of team travel among many other issues.

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\* Arthur T. Johnson is professor of Political Science at the University of Maryland Baltimore County. He has written several articles, and is co-editor of a book, on public sports policy. He conducted two studies of minor league baseball for the International City Management Association, and is the author of Minor League Baseball and Local Economic Development (University of Illinois Press, 1993). He has written opinion pieces on sports policy issues for the Baltimore Sun, the Arizona Republic, and USA Today's Baseball Weekly among other newspapers.

The current PBA was signed by the National Association and Major League Baseball in December, 1990, after bitter negotiations, during which the major leagues threatened to abandon the National Association leagues and establish their own minor leagues. This PBA is scheduled to expire September 30, 1997, but may be terminated September 30, 1994, by either the major leagues or the minor leagues.

The 1990 PBA significantly tightened Major League Baseball's control over the PDC, minor league team ownership and location, minor league expansion, and stadium specifications (see below). The PBA imposed upon the minor leagues payments to the major leagues that did not previously exist, denied them payments previously made by Major League Baseball and reduced subsidies for certain operating expenses.

The net result is that minor league teams were saddled with thousands of dollars of new costs. For marginal team operations, this is the difference between a profitable operation and a losing one. For a majority of teams, it has meant that they have had to seek more generous leases from their local government landlords or have had to demand new stadiums that are capable of generating increased revenue.

It is significant that the 1990 PBA guarantees only 119 Player Development Contracts for future years. This opens the door for the major leagues to reduce their commitment to the minor leagues and thereby reduce the number of minor league teams that now exist.

#### TEAM OWNERSHIP: NOT A COMMUNITY AFFAIR

Part of the minor league myth is the belief that minor league teams are predominantly community ownership operations. The fact is that most minor league teams are owned by individuals and investment syndicates. In a 1989 survey of communities hosting minor league baseball teams conducted for the International City Management Association, only 52.3% of the responding communities reported local ownership of their teams (Johnson, 1989: 10). Furthermore, only a small number of these local team owners include non-profit community organizations or local governments.

There also is a belief that major league teams are owners of their minor league affiliates. Prior to 1950, major league teams did own or control a majority of minor league teams, especially at the higher league levels. Today, only in a small number of cases do major league teams remain owners, and this is usually at lower league levels.

Franchises, which were virtually given away or sold for not more than a few thousand dollars as recently as the early-1980s, now attract offers of a million dollars or more. The South Bend A-level franchise is instructive. In 1985 it was bought as an expansion

franchise for \$40,000; in 1987, it was sold for \$465,000 before it ever played a game; and in 1990, it again was sold for a reported price of approximately \$4 million (Johnson, 1993: 18). At the higher league levels, a franchise can sell for more than \$5 million.

The 1991 PBA actually may have made ownership by community organizations more difficult by virtue of its financial requirements for team owners. Also, the Commissioner of Major League Baseball has final authority to approve minor league team ownership transactions. Given Major League Baseball's distaste for government involvement in team ownership arrangements, it is not clear that the Commissioner's office will look with favor upon future ownership arrangements that include non-profit community organizations (such as that of Rochester, New York and Toledo and Columbus, Ohio) or local government authorities (such as that of Scranton/Wilkes-Barre, Pennsylvania).

In fact, it is increasingly difficult for community organizations to operate as team owners. They either are unable to meet the sophisticated needs of modern business demands and the increased operating costs of minor league baseball or they are unable to resist the temptation of a lucrative purchase offer which they can then use to support their charitable goals. As a recent article about the Billings, Montana, Rookie League team in Kiplinger's Finance Magazine put it: "...mom and pop operations are becoming the exception, even among smaller clubs" (Schiffres, 1992: 75).

Minor league baseball today requires a knowledge of business and promotion. It is no longer an enterprise in which a sports fan can succeed by virtue of his love for the game or in which a community organization can become involved merely to generate a few dollars for a charity.

Minor league team owners and general managers describe their business as entertainment, not baseball. They do not scout, draft, or sign players. A team's manager and coaching staff are assigned by the major league club, and take their instructions from that organization, not from the minor league team's owner or general manager. In fact, the latter have little to do with what happens on the baseball field. Therefore, in order to succeed as a minor league team owner, it is more important to have good business sense than a knowledge of the game.

#### LOCAL GOVERNMENTS AND MINOR LEAGUE BASEBALL: NEW OR IMPROVED STADIUMS DICTATED BY 1990 PBA

More than 95% of minor league teams play in publicly owned ball parks. The 1990 PBA dictates specific stadium standards for each league level. These standards apply to existing stadiums as well as new stadiums. They apply to all aspects of a stadium--from field lighting, plumbing fixtures, parking, and sound systems to team

laundries and the number of lockers and minimum floorspace in clubhouses.

HOK, an architectural firm, has estimated that renovation costs attributed to the new standards will range from \$100,000 to \$2.5 million (Barton, 1992: 6). The cost of new stadiums range from \$4.4 million for Kane County's (Illinois) A-league stadium to a projected \$18 million for Salt Lake City's new stadium for AAA baseball.

This means that local governments must decide if they can afford the hundreds of thousands of dollars to renovate older stadiums or millions of dollars to build a new stadium. The ability of the teams to share in these costs, particularly at the lower league levels, is questionable, especially in light of the increased financial burden imposed on the teams by the 1990 PBA.

Very few minor league teams produce sufficient revenues for their communities to cover these costs. For example, in the 1989 ICMA survey, of those communities that reported operating costs in support of and revenues derived from minor league baseball for the years 1986, 1987, and 1988, 75.9%, 74.6% and 76.1%, respectively, reported a deficit operation (Johnson, 1989: 7).

It is clear that the new stadium standards imposed by the major leagues will cost some communities their teams, as has already happened in Hagerstown, Maryland, where the owners of that community's AA team and local officials agreed that they could not afford the \$2 million needed to bring Hagerstown's publicly owned stadium to the prescribed standards for AA baseball. In fact, major league clubs are likely to pressure their minor league teams to relocate if they are unable to acquire modern facilities from their host communities.

#### FRANCHISE RELOCATION: COMMUNITIES HAVE NO PROTECTION

The relationship between minor teams and their local governments is not always cordial. Leases are short term, especially at the lower league levels. In the 1989 ICMA survey, 72.4% of the communities reported leases of five years or less, many of which were year to year (Johnson, 1989: 8). Such leases invite frequent demands for stadium improvements or better rental terms.

Threats to relocate are common when a team makes demands for an improved lease or stadium improvements. In the ICMA survey, 40% of the communities that were the target of such demands reported that their teams had threatened to relocate (Johnson, 1989: 10).

Even though there are more than 150 teams, the minor leagues are geographically compact. Because of this and the fact that, like the major leagues, the supply of minor league teams is kept limited,

there are relatively few teams available to communities that lose a team.

Table I summarizes the number of franchise relocations since 1987. These data demonstrate that minor league franchises are not tied to their communities. Also, it should be noted that smaller communities have had a difficult time maintaining their teams in recent years. For example, of the smallest communities in 15 leagues in 1986, five had lost franchises by 1990. Nearly two-thirds of the franchise relocations between 1987 and 1993 occurred from communities with a population of less than 100,000.

TABLE I  
MINOR LEAGUE FRANCHISE RELOCATIONS, 1987-1993

League Level	1987	1988	1989	1990	1991	1992	1993	Total
AAA	0	1	1	0	0	0	1	3
AA	2	1	4	0	1	1	2	11
A	4	6	5	1	3	2	10	31
Rookie	1	0	0	1	0	1	1	4
Total	7	8	10	2	4	4	14	49

Minor league team operators are dependent upon a generous arrangement with local governments for their economic success. As the major leagues reduce the profitability of minor league teams, minor league team owners will be forced to turn toward local government for larger subsidies. The relationship between minor league team owners and local governments are fast becoming very similar, albeit on a smaller scale, to that of the major league owners and their host communities. The media and other commentators often characterize this relationship as one based on extortion.

Local governments cannot make policy decisions to invest in minor league baseball stadiums based solely on nostalgia and myth. They often justify their stadium decisions on the hope of economic development. The fact is, however, that hope is a false one because a minor league team is of relatively small importance to a local economy.

#### ECONOMIC IMPACT OF MINOR LEAGUE TEAMS: NOT MAJOR LEAGUE

It is important not to equate a minor league team's success in attracting fans or winning games with its importance to the local



economy. An analysis of a minor league team's operation and financial resources suggests that its actual economic impact is minimal. A minor league team is more analogous to a small business than to a major league sports team.

A minor league team's gross operating budget, with few exceptions, ranges from approximately \$150,000 to more than \$2 million depending on the level of the league in which the team plays. For example, expenditure figures for three community-operated AAA teams in 1987 and 1988--teams that generally have the largest team operating budgets--ranged from \$687,000 to \$1.6 million (Johnson, 1990: 6). By contrast, an average grocery store does approximately \$7 million dollars in sales and employs more people on a year-round basis.

A minor league team employs 5 to 20 individuals beyond its 21 to 26 players and coaches. Many of these employees, if not most, will be employed on a seasonal basis and paid on a commission basis. Players receive a minimum salary of less than a thousand dollars a month. The majority are paid only during the playing season (April to August). Workers behind the concession stands and vendors may be volunteers or work on a part-time basis. The profits of a team with non-local owners likely will be invested elsewhere.

Visiting teams stay at a hotel in the community (sometimes sleeping three to four to a room), increasing that establishment's revenue, but not necessarily increasing employment there. The low per diem given to players (from \$5.50 to \$14.00) makes it unlikely that they have a major impact on the restaurant and bar business. There are two to three umpires per game, a small number of fans occasionally may follow the visiting team to town and stay overnight (in many cases they can return home the same night) and scouts and personnel from the parent club visit the community on an irregular basis.

Claims of significant economic impact, therefore, must be suspect. In fact, only 11% of the communities in the ICMA survey reported an attempt to document their team's economic impact and nearly half of these studies were done by the teams (Johnson, 1991: 116).

In one study of the economic importance of minor league teams, directors of economic development agencies and of visitor and convention bureaus in several case study communities were questioned about the importance of the teams in their operations. Not one could cite any instance when a company located to the community as a result of the presence of professional baseball. Further, few of those interviewed stated that the presence of the team was a major aspect of their sales pitch. Even the visitor and convention bureaus seemed to be detached from their communities' teams (Johnson, 1991: 317).

Furthermore, in the same study, no evidence was found to support the view that communities which have lost a team are worse off in

their absence. For example, neither Birmingham, Alabama, nor Charlotte, North Carolina which lost their teams to the suburbs, nor Fresno, California, which lost franchises in 1987 and 1988, show any negative effect of being without a team.

This is not to say that local governments cannot use minor league teams and stadiums to their benefit. However, for a stadium and team to contribute in a significant way to the local economy, there must be an overall development plan that integrates the stadium into the economic and recreational plans of the community. Examples of such success are few, but they include Harrisburg, Pennsylvania, South Bend, Indiana, Buffalo, New York, and Frederick, Maryland.

In sum, there is no objective evidence that a minor league team by itself, especially at the lower levels of competition, has a significant direct economic impact. Even if a generous multiplier was applied to a team's total economic activity, the result would be a minor factor within the total economy of a community.

#### THE MINOR LEAGUES AND BASEBALL'S ANTITRUST EXEMPTION: IN WHOSE INTERESTS?

Minor league baseball is expected to serve a variety of interests: provide Americans live access to professional baseball; support the goals of local economic development; and to serve the player development and economic interests of major league baseball. Given the dominance of major league baseball over the minor leagues, which baseball's antitrust exemption facilitates, the interests of the major leagues have taken priority over all other interests.

The history of minor league baseball has been marked by a constant tension with the major leagues. Neil Sullivan, in his book The Minors, establishes the fact that on several occasions throughout the twentieth century the minor leagues were in a position to operate independently and to challenge the major leagues' dominance.

According to Sullivan, former Commissioner of Major League Baseball, Kenesaw Mountain Landis, argued strongly that "the integrity of the minor league game required independence from major league franchises." Yet, rather than assume the economic risks of independence, minor league officials accepted the promised security of the "artificial hierarchy of organized baseball" that permitted domination by the major leagues (Sullivan, 1990: ix).

Sullivan describes the history of the minor leagues as being scarred by the major leagues' successful efforts to keep the minor leagues subordinate. The apparent security promised to the minor leagues by the major leagues proved time and time again to be a false security. He writes, "The majors have continually made decisions about personnel policies, franchise relocation, expansion

and broadcasting that were indifferent or damaging to the minors" (Sullivan, 1990: viii).

This view was corroborated by the PBA negotiations in 1990, which many minor league team owners saw as another example of the "greed and animosity" that characterize the attitudes of major league owners toward the minor leagues.

The preservation of baseball's antitrust exemption will guarantee that the major leagues' dominance will go unchallenged. There will be no guarantee that the current number of minor league teams will be maintained. Many in the industry already believe that the majors will reduce their commitment to the minors within the next few years and thereby diminish public access to professional baseball.

Also, current arrangements not only make it difficult for local governments to recover their stadium's operating costs but they also dissuade minor league teams from entering into long term leases that local governments seek in order to protect their investment. Local governments, especially those representing smaller communities, should be able to negotiate with team owners on a level playing field if they are expected to invest millions of taxpayer dollars for a minor league stadium.

For example, one minor league team owner suggested in a February, 1991 interview that one result of the 1990 PBA negotiations was that it will become more difficult for minor league team owners to take a long-range view of their operations. Implicit in his analysis is greater instability in franchise ownership and, consequently, in franchise location.

Therefore, from the perspective of local governments, communities would be better able to protect their investments if more teams were available with which to negotiate. Removal of baseball's antitrust exemption might provide that opportunity.

It should be understood that removal of the exemption will not prevent the major and minor leagues from negotiating new arrangements that continue public access to professional baseball and that permit a context for player development. Therefore, one possible outcome of the removal of the antitrust exemption might be little change at the minor league level.

In the event that, for whatever reason, the parties abandon the current arrangement, however, repeal of the antitrust exemption would permit minor league operators to compete for player talent and even move within a major league territory to compete for fans. Many current owners do not want to become so involved in the baseball side of the business and some would either sell their teams or fail. However, many more would welcome the opportunity and many owners would be successful as Sullivan documents they have been in the past.

Therefore, another possible scenario is that, absent the antitrust exemption, the minor leagues would grow stronger as they become independent operators. More opportunity for players, local governments, and fans would evolve in such a scenario.

#### SUMMARY

In sum, minor league baseball, like its major league counterpart, is first and foremost a business. The facts of that business belie the myths surrounding minor league baseball. Minor league teams are neither predominantly community based nor small town enterprises. Their business is entertainment, not baseball.

Although minor league baseball is expected to serve a variety of interests, the minors have been exploited by major league baseball for its own narrow interest--that of player development--at the expense of other objectives that serve a broader public interest--those of public access to professional baseball and local governments' need to protect their investments. This is facilitated by the industry's antitrust exemption.

Just as the image of minor league baseball has been perpetuated by myth and nostalgia, maintenance of the exemption also has been based on myth and nostalgia. In both cases, the facts call for a new reality-based view of the business of professional baseball.

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U.S. House of Representatives  
Small Business Committee  
July 20, 1994

Testimony of Marianne McGettigan  
Representing the Major League Baseball Players Association

On behalf of the Major League Baseball Players Association, I would like to thank the Committee for the opportunity to testify today. Donald Fehr, the Executive Director of the Association had hoped to appear here today, but unfortunately he must be in New York for ongoing labor negotiations. If the Committee has any questions for Mr. Fehr, in particular, he would be happy to answer them for the record. Also with me today is Mr. Steven Fehr an attorney from Kansas City. Steve has had considerable experience in many aspects of baseball since 1980. He has represented dozens of major and minor league players in individual contract negotiations. In addition, he was one of the lead attorneys for the Players Association in the collusion cases of the mid-80's involving conspiracies by major league clubs against free agent players, and is outside counsel to the Association on an ongoing basis on a variety of issues. With the Committee's permission, I would like to allot a portion of my time at the conclusion of my remarks so that Steve may share his considerable experience with minor league players with the Committee.

I am an attorney in private practice and have been directing the governmental affairs activities of the Association since 1992. My involvement in issues relating to sports laws dates back to 1975

when I joined the Washington State Attorney General's Office. At that time then Attorney General, now Senator, Slade Gorton was suing the American League for the move of the Seattle Pilots out of Seattle one year after they had moved to Washington in 1969. The Pilots, of course, are now the Milwaukee Brewers. That lawsuit was settled as the case was going to the jury -- resulting in the expansion of the American League by two teams, the Mariners and the Toronto Blue Jays. As a result of that experience, when Senator Gorton joined the Senate in 1981, one of my first assignments as a member of his senate staff was to draft a bill to address the issue of sports franchise relocations.

In the course of that effort, the Davis case was in progress and the notorious midnight ride of the Baltimore Colts to Indianapolis took place. At the same time, as Chairman of the Consumer Subcommittee, Senator Gorton dealt with a variety of other sports legislation including legislation offered by Senator Rudy Boschwitz to remove baseball's antitrust exemption in his effort to keep the Twins in Minnesota. In short, I have spent many years involved in these issues, not only for baseball but the other professional sports as well.

When the question of baseball's antitrust exemption was raised at a Senate Judiciary Committee hearing in December, 1992, there were two points that were particularly interesting. First, Fay Vincent, who had recently reluctantly resigned as Commissioner of baseball told the Committee that "Baseball is not seriously dependent on the continuation of the antitrust exemption." Second,

the minor leagues were barely mentioned by acting Commissioner Bud Selig as a justification for continuing the exemption. By March, 1993, when the House Judiciary Committee held a hearing on the exemption, however, the minor leagues had become a focus, if not the focus, of the exemption's justification.

Proponents of repeal of the exemption, and I might add that there is a great debate as to what the precise scope of the exemption is, were now forced to respond directly to the assertions that the elimination of the exemption would end minor league baseball as we know it. That has turned out to be a difficult job - largely because the arguments of the demise of the minor leagues are wholly conclusory. We have never seen any data or economic analysis to support any of the arguments. There have been many "What ifs." We believe the flexibility inherent in the antitrust laws rule of reason approach is more than adequate to deal with those if the antitrust laws apply. The point is, there is no law to deal with the "What ifs" associated with the use of power by the major leagues if the antitrust exemption continues.

Simply put, the minor leagues may have more to fear from the major leagues themselves than from the application of the antitrust laws. We believe the minor leagues understood this all too well when they came to Capitol Hill in 1990 seeking support for repeal of the exemption. And, we believe, they may well be back to Congress in 1997 (or even next year) taking that position again.

Let me briefly outline the perils presented to the minor league teams by the major leagues that are permitted to act above



the law that applies to all other businesses in the country, at least those that are not subject to extensive regulatory control:

1. At the most basic level, minor league owners have no control over their destiny. They have little, if any, independence and no leeway to advocate to improve their position because they are essentially captives of the economic power of the major league owners. As a practical matter, while other affected parties may argue the scope of the exemption, minor league baseball may not. For instance, the exemption has been held not to apply to the local radio broadcasts or to dealings with other employees such as umpires. And, most recently, a United States District Court judge for the Eastern District of Pennsylvania has held that the exemption is limited to the player reserve clause only. That case, Piazza v. MLB is ongoing and may make opponents of legislation eventually wish they had sought legislation to ease the transition to a free enterprize system rather than fighting to preserve this anomalous exception. But what minor league team will dispute the scope of the exemption with major league baseball in the face of upcoming negotiations to extend the Professional Baseball Agreement (PBA)?

2. The minor leagues have virtually no leverage in bargaining a PBA with the major leagues, a point they concede to the extent some assert they cannot survive without a major league affiliation. This, however, is apparently not a problem for the new and growing

independent leagues.

3. If the major leagues choose to abandon some or all of the minor leagues, as they threatened to do in 1990, the minors will have no protection against anticompetitive collusive action by the owners. For instance, the major league owners could simply put out the word that if a young player signed with the minors, he would never play in the majors. The antitrust laws would not tolerate that.

4. The minor leagues covered by the 1990 agreement may not expand without the permission of the major leagues. Yet the major leagues not only determine what territory "belongs" to the minor league team, they may take it for purposes of placing a major league team in the territory. And, although the PBA does require compensation for territory so taken, my understanding is that, at least in one case, the minor league team is having trouble obtaining that reimbursement.

5. If some minor league teams - either those currently affiliated with the majors or the independents seek to establish a new major league to serve the considerable number of unserved markets, the baseball cartel would use all of its collective economic power to thwart such an effort without any worry of a court or regulatory agency's oversight.

6. If there is a work stoppage at the major league level, the majors may unilaterally halt play at the minor league level. Because Mr. Brand disagrees with this conclusion, I will briefly describe why we believe that to be the case:

The relationship between the non-independent minor leagues, their members clubs, and the major leagues is governed by the PBA. The minor league players, however, are not directly employed by the minor leagues but, in fact, sign contracts directly with their major league team (the Minor League Uniform Player Contract, a copy of which has been supplied to the committee staff).

The PBA provides the owners with the authority to unilaterally amend, formulate or adopt provisions of the Major League Rules, which are incorporated into the Agreement, during the life of the agreement. These rules cover, among other things, all rules governing the "direction of players to perform for particular Major and Minor League clubs." In other words, at any time during the life of the Agreement, the owners may unilaterally change the rules as to whether players will actually perform for a minor league club.

The PBA also expressly provides that "The Minor League Club shall respect, be bound by, abide by and not interfere with all contracts between the Major League Club and the players that it has provided to the Minor League Club." The Minor League Uniform Player Contract which, according to the above, the minor league club must respect and be bound by, abide by and not interfere with contains a Paragraph XXIII that states: "This Minor League Uniform

Player Contract is subject to federal and state legislation, regulations, executive or other official orders and other governmental action, now or hereafter in effect, which may affect directly or indirectly Player or Club. Additionally, this Minor League Uniform Player Contract is subject to the authority of the Commissioner to suspend the operation of this contract, including payment of compensation to Player, during any national emergency or any cessation or suspension of play in the Major Leagues. In the event that this Minor league Uniform Player Contract is suspended pursuant to the terms of this paragraph, it is specifically agreed between Player and Club that the compensation provision of Paragraph VII shall be modified and the compensation paid to the Player at the monthly rate set forth in Paragraph VII shall be paid only for the portion of the championship playing season actually played by the Player. Moreover, in the event that this Minor League Uniform Player Contract is suspended pursuant to the terms of this Paragraph XXIII, it is also specifically agreed between Player and Club that the Club's exclusive right to the Player's services shall remain in effect and that this Minor League Uniform Player Contract shall continue in full force and effect for the remainder of its term once the suspension ends." (emphasis supplied.)

This language could not be any clearer. The major leagues have retained the authority to suspend play in the minors. It makes sense that if revenues are no longer coming in at the major league level, the major league clubs might want to cut their losses

by suspending play at the minor leagues. More to the point, if I were a player, and the major league team holding my contract told me that my contract was suspended pursuant to paragraph XXIII because of a major league strike or a lockout, there is no question what I would do. I would not continue to play.

The Major League Players Association has no particular position on whether minor league play will, or will not be, suspended in the case of a major league strike or a lockout. Only the major league owners could know the plan, if there is a plan. But, we do believe that those considering the public policy surrounding the major and minor leagues and the laws that apply, or do not apply, to them ought to be fully informed as to the possible consequences of a work stoppage in the major leagues. Understanding that paragraph XXIII of the Minor League Uniform Player Contract exists is certainly germane to this debate.

Mr. Brand could shed light on this dispute by merely getting the legal opinion of the attorneys for Major League Baseball (likely the same attorneys who drafted or cleared the Minor League Uniform Player Contract) that his interpretation is correct. He could seek to have what he believes to be the superfluous language of paragraph XXIII deleted from the contract. That, of course, would require the permission of Acting Commissioner Bud Selig.

In fact, Mr. Brand and the owners had an opportunity to resolve any confusion over this issue recently when Bud Selig spoke at the National Press Club. After his speech and during the question and answer period, Mr. Selig was asked specifically

whether the owners had the authority to halt play in the minors and, if so, whether they would exercise that power? He gave the following answer according to the official transcript of his remarks:

"You know, number one, I don't -- the fact of the matter is that we have not stopped minor league baseball in past labor strife, and I'm certain that we would not now. But I really - - I'm an optimist by nature, and I really don't want [to] spend a lot of time talking about all the horrible consequences that would happen. That's one that wouldn't happen, but the fact of the matter is that I hope we can be more optimistic and just figure a way to solve this problem rather than worry about all the negative consequences."

Given the concerns expressed by several members of Congress about whether play may be halted in the minor leagues if there is a strike in the majors, one has to wonder why Mr. Selig has not made it absolutely clear publicly that the owners have no legal authority to suspend play in the minors notwithstanding the provisions of Paragraph XXIII.

The fact is, no one knows how long a strike will last if one is commenced. Mr. Selig's opinion that he does not believe the majors would suspend play in the minors could well change if a strike were to run into next year. He did not say the major leagues could not suspend play and, as only one vote, and as a commissioner who can no longer compel play in the "best interests of baseball" his opinion could be overruled by the other owners.

The minor leagues are to a large extent the victims of the monopoly power of the major league cartel. But they are not the only victims of the unrestricted and unreviewed monopoly power of the major leagues. The cities and towns that have hosted minor league baseball have in essence been given an "unfunded mandate" to upgrade existing or build new stadiums or lose their teams. This is a classic boycott, or more precisely "failure to deal" under the antitrust laws. It should be reviewed in depth before any more public money is spent to comply with a contract to which the city was not a party and which may be terminated next year, and terminates by its own terms in 1997. I called it an unfunded mandate, and I am sure the members of this committee have heard a lot from their constituents in that regard in other areas. But in one sense this is worse. Citizens have no recourse. They have no vote on who may be a major league owner. They have no one who can introduce amendment to the PBA on their behalf in negotiations. And, because the major leagues have as yet given no long term commitment to the cities, no one knows what will become of these investments after 1997. And, perhaps worst of all, the major leagues have imposed mandates on the minor leagues by way of stadium standards that many of their own facilities cannot meet.

The notion espoused by some that the exemption must continue to protect this public investment is silly at best. It is the exemption that permits this extortion. And, those that advocate its continuance can offer this committee no assurance that the major leagues will make a long term commitment to the cities. As

Niagara Falls City Administrator Thomas Lizardo put it: "The situation is that baseball is looking to extract a commitment but not make a commitment." Before this committee considers this argument further it should be given information by MLB or the minors on the amount of public investment already made under the PBA and what commitment of public funding is still sought from the cities and towns.

With the Committee's permission, I would like to ask Mr. Steven Fehr to address the issue that is truly at the heart of the antitrust exemption, the restraints on the ability of players, like minor league owners, to control their own destiny.



## TESTIMONY OF PAT O'CONNOR

## National Association of Professional Baseball Leagues

On behalf of the National Association office, President Mike Moore, the Board of Trustees, Council of League Presidents and our member leagues and clubs... I would like to thank the Class A Association for the opportunity to address this gathering. This is indeed a historic event in the history of Minor League Baseball. We appreciate your interest and attendance and I congratulate you on your participation.

There is no secret as to why we are here. The minor leagues, as we know them, have operated for the past 70 - plus years under the exemption to the federal anti-trust laws. The shape, structure and mechanics of our system has been formed under a system which included the anti-trust exemption.

Under our current system...Major League Baseball and the Minor Leagues are able to work cooperatively, at times, to provide America with grass roots baseball throughout 43 of our 50 states. To remove this exemption holds the potential of removing the very underpinnings of our system. A repeal could realistically undo the practical framework that is our system.

While no one knows for sure...and this uncertainty is cause for caution...we have reason to believe that 3 fundamental elements our of current system would come under serious scrutiny without the exemption.

1. The current draft and player acquisition system would be forced to change
2. The reserve system as we know it would be revamped or eliminated, AND
3. The Professional Baseball Agreement, the very document that binds the Majors and the Minors, might be invalid.

We must then imagine a world with no Major League Baseball assistance in the procurement, retention and assignment of players to Minor League clubs. To shift this burden directly to the clubs of the National Association would be a death sentence to much of the Minor Leagues. Even if Major League Baseball continues to develop its own talent, the inability to retain developing players is an enormous disincentive to continue the process at its current levels. Participation between the Major and Minors, at anything less than current levels of assistance would carry devastating economic consequences to our clubs. It is critical to recognize that acquiring and developing players by the Major Leagues is akin to Research & Development in an industrial setting. The goal of our current system is to find and/or develop a better player. There is asset value to the Major Leagues in the players in our current system. Players reaching the Majors are assets to MLB. Aspiring prospects have trade value to the Major League clubs. Without a coordinated system of development, no such asset value exists to Minor League teams. Baseball tried buying and selling contracts at the Minor League

level...it simply did not work. To field clubs at the various levels would carry expenses at levels such as this:

Class AAA	\$500 to \$700,000
Class AA	\$400 to \$500,000
Class A	\$300 to \$400,000
Short A/Rookie	\$150 to \$300,000

Now, it is important to note that these projections are less than the current levels being spent. A revamped system would deflate salaries and bonuses from their current levels. The pay & perks available to the players would take a giant leap backwards under an exemption-less system. Players would spend longer in a given city and find the road to the Majors even longer and filled with greater hurdles.

To the Minor League ballclubs...this added expense of scouting, procurement and instruction would be forced on a profit-and-loss statement unable to withstand such a burden.

Based on 1992 financial reports

- \* 56.7% of all NA clubs should net LOSSES from operations under our current system
- \* 61% of all clubs in the Class A/Rookie levels show net LOSSES
- \* Based on the expense levels outlined earlier, only 10% of our clubs, that's less than 20 clubs, in the NA could conceivably survive the added costs.

The business of owning a Minor League baseball team in the National Association is an equity business. Profits from operations are very limited and the overall profit margin is a modest single digit figure. Owners make the overwhelming majority of their money if and when they sell a ballclub. Repeal of the exemption, that leads to an alteration of the status quo, would strip away the key element of our franchise values --- the close and contractual relationship between Major League and Minor League baseball. A world without the PBA would crash the Minor League franchise market unlike anything Wall Street has ever experience.

- \* And every classification is affected...Net LOSSES cross all lines:
  - 13 of 26 AAA clubs experience net LOSSES
  - 12 of 26 AA clubs experience net LOSSES
  - 38 of 59 A clubs experience net LOSSES
  - 22 of 39 Short A/Rookie clubs experience net LOSSES
- \* Just as every classification is affected, so is every city, county and state that hosts a Minor League club.

93% of all NA clubs are in cities of 500,000 or less

55% of our clubs are in cities of 100,000 or less

75% of our clubs do not even have COUNTY populations of 500,000 people

- \* The small and medium sized communities will face one of two likely scenarios:
  1. Lose their local team due to economics
  2. Face increased ticket costs, concessions costs and advertising rates to support a revamped system.

In short, repeal of the exemption could subject the consumer to a limited supply of baseball at grossly increased prices. The essence of Minor League baseball is the enjoyment of going to your hometown stadium and watching your local club. To date we have avoided high priced tickets, expensive concessions and dominant reliance on corporate America for financial support.

There also needs to be concern for the communities throughout this country that have erected or renovated facilities in a show of unconditional support of their hometown baseball team.

- \* Since 1990, NA host communities and clubs have invested over \$116-million in stadia
- \* Another \$89-million in construction and improvements are being planned and carried out even as we speak
- \* By 1995, we conservatively estimate, nearly \$300-million, will have been invested by the clubs and towns, cities, counties and states that host Minor League Baseball.

The funds used for these facilities have come from bonds and pledges by a wide variety of municipalities. If our game is forced to reshape without the exemption many communities will lose their baseball and face the debt retirement on the facility without the benefit of any baseball or baseball related revenues. Clubs simply will not be able to operate.

Along with the loss of the enjoyment of seeing a live game, communities will lose jobs, taxes and the unique distinction of being one of 200 American cities to host professional baseball.

To work in baseball one must recognize and, most importantly, respect the uniqueness of the game. While there is room for solid business principles, our game is unlike any other

industry in the country. Baseball is not like the steel industry, the auto industry, the airlines or even like any other professional sport. The resources it takes to develop a Major League player, in time and expense, has no like model in the entire country. It is critical, that we proceed with extreme caution. Our system knows no other way. Major changes with uncertain, unknown implications carry frightening consequences. One fact is undisputedly clear NO ONE KNOWS FOR SURE what a repeal would mean. I encourage each of you to think and rethink the consequences a repeal might carry. The Minor Leagues are clearly NOT in a financial position to weather substantial alterations in the way we do business.

If the motivation for the repeal is the:

- = Lack of MLB expansion
- = Lack of MLB relocations
- = Lack of a commissioner

Then I suggest you may be in error. The courts have traditionally allowed for league rules governing expansions and relocations. Repeal will allow for excessive litigation from within and from outside of the game. The expense of this litigation will be a public relations blackeye for the game and it will be costly...a cost passed on to the consumer. Baseball belongs to America. Those of us that work in the game are but the current caretakers of an American tradition. Repeal of this exemption could harm the game, the communities, the fans and the players. Who wins? Our game needs to be played out on the field...not in the courts and certainly not in the halls of Congress.

U.S. House of Representatives  
Committee on Small Business  
Chairman, Congressman John J. LaFalce

Baseball's Antitrust Exemption

Testimony of Paul C. Weiler  
Henry J. Friendly Professor of Law, Harvard Law School  
July 20, 1995

I want to thank the Small Business Committee and its Chair for inviting me to testify at your hearings on the pros and cons of baseball's antitrust exemption. I apologize for the brevity of this written statement of my own views on the issues. This is all that I could manage now, given the competing demands of my work as Chief Counsel for the President's Commission on the Future of Worker-Management Relations. A full elaboration of my position will be found in the book I am now writing, Sports on Trial, that Harvard University Press will be publishing sometime late next year.

It is good to know that there are members of Congress who are not willing to sweep under the rug this legal and political football that both the courts and the Congress have been trying to pass off to each other for the last forty years. I was also pleased to learn that this hearing is not focused on the problems of major league baseball that receive almost all the media attention -- especially fights about which city will keep or get an existing franchise. The minor leagues are an equally vital component of this country's

National Pastime -- involving nearly 4,000 players in games that take place in 200 or so communities. Minor league baseball's popularity is soaring: annual attendance is up from 10 million spectators in the early 1960s to 30 million in the early 1990s. Understandably, then, people want some assurance that a change in legal status will help, rather than harm, the quality of the game enjoyed by its fans and its players.

I need not retell here all the details of how baseball's antitrust exemption came to pass. Suffice it to say that the Supreme Court ruled in the early 1920s, in the Federal Baseball case, that the business of baseball was not the kind of interstate commerce that Congress could subject to national antitrust legislation. That ruling, by Justice Oliver Wendell Holmes, was a plausible interpretation of the scope of Congress's regulatory authority over business, given the state of constitutional jurisprudence at the time. Fifty years later, though, when the Court, in the Curt Flood case, refused again to overturn Federal Baseball, there was absolutely no question that baseball was subject to Congress's interstate commerce legislative authority.\* However, because of what the Court labeled Congress's "positive inaction" on this score

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\* Indeed, in a little-noticed paragraph in Flood, Justice Blackmun held that, for precisely this reason, the states could not regulate the business of baseball, thereby handing baseball owners yet another bit of legal largesse that, among other things, sharply altered the political dynamic of the debate about baseball's national antitrust immunity.

-- the fact that Congress had considered but not enacted a number of proposals to alter this particular legal doctrine -- the Court shied away from the issue once more.

Less well known is the fact that the crucial judicial event in this history was a case called Toolson, decided by the Supreme Court in the early 1950s. The Toolson case arose after the Supreme Court's constitutional revolution of the late 1930s had greatly expanded Congress's commerce clause authority so that baseball (and other sports) were clearly included. However, the majority of the Toolson court ruled, in an anonymous, one-paragraph decision, that it was up to Congress, not the courts to reverse Federal Baseball three decades later.\* What the Justices did not seem to appreciate is that Congress assumed -- in particular, in its 1952 Report on Organized Baseball -- that the courts would themselves be removing baseball's general antitrust exemption and then scrutinizing its reserve system under the antitrust "rule of reason." Congress wanted to wait and see what would be the judicial verdict on that latter score, before itself deciding whether to offer some kind of special legal treatment to baseball's reserve system.

Ironically, if Toolson had not arisen and been decided in the early 1950s, with the Justices ducking this legal and political hot potato, there is absolutely no doubt that in the

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\* The court so ruled in Toolson although, in the mid-1940s, it had overturned similar antitrust exemptions given earlier in the 20th century to the insurance industry, for example.

1970s the Court would have ruled in the opposite way in Flood. Federal Baseball would have been overturned, subjecting baseball to exactly the same brand of antitrust law the Court had by then imposed on football in the Pete Radovich case in the late 1950s and on basketball in the Spencer Haywood case in the late 1960s. However, without anybody ever having made an affirmative decision on the merits that baseball owners needed and deserved this legal shield for their business dealings, the accidental byproduct of that legal history is that owners continue to enjoy special dispensation from any antitrust scrutiny of their uses of their economic power. Especially in the 1950s, the Congress expected that the courts would fix this judge-made aberration, but the courts have insisted that Congress deal with this politically sensitive problem.

In the 1990s it is almost impossible to find a sports law or economics scholar who affirmatively defends the legitimacy of baseball's antitrust exemption.\* One important reason for this present-day point of view is that, unlike the judges who were deciding Flood (let alone Toolson and Federal Baseball),

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\* One possible candidate is my friend and co-author Gary Roberts. Professor Roberts' main concern about antitrust, though, is the way that Section 1 of the Sherman Act has blocked league efforts to regulate individual owners, particularly in their unilateral relocations of league franchises. Roberts does believe that sports leagues (including baseball) should be governed by Section 2 restraints on misuse of monopoly power and, indeed, Roberts is attracted to the idea of breaking up the big leagues into several competitors, the quintessential antitrust remedy.



we have witnessed life in sports without the traditional owner-written and commissioner-enforced reserve system. Those systems for restricting player movement (at least at the behest of the player, rather than the owner) were overturned in the mid-1970s by antitrust rulings in football (John Mackey), in basketball (Oscar Robertson), and in hockey (Philadelphia World Hockey), and by a fortuitous arbitration ruling (Andy Messersmith) in major league baseball.

At least two important lessons can be drawn from two decades experience in these new legal worlds. The first is that antitrust law is flexible, not rigid. When cases go to court, any complicated problems (such as those typically presented by the world of sports) are disposed of not with automatic, per se rules, but instead through a sensitive "rule of reason" inquiry about the kinds of market arrangements that enhance the welfare of a business's several constituencies. (Judge Stephen Breyer, my former Harvard colleague and now Supreme Court nominee, is one of the leading scholarly and judicial exponents of this antitrust point of view.) The vast majority of the time the parties don't go to trial: instead, they themselves negotiate a settlement that responds in a "win-win" fashion to the various interests affected by a business practice.\* And in the sports labor market, if there

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\* Indeed, just this week, we are seeing confirmation of that fact of antitrust life as people study and reflect upon the implications of the Microsoft-Department of Justice settlement for the computer software industry.

is an independent union representing the interests of players, the union can give blanket immunity to a league practice that, however restrictive of player mobility, has been fashioned by good-faith, arms-length bargaining between owners and players (Dale McCourt: Leon Wood).

The practical significance, then, of removal by Congress (or the courts) of baseball's antitrust exemption is simply that the owners will know they cannot write all the rules of the game themselves, responding only to their financial interests. Ultimately, owners will have to be willing to adopt a reasonable position which will appeal to either the representatives of the other side, or to a neutral judge who has no axe to grind on the subject.

The second lesson is that under a variety of rules fashioned in different sports over the last two decades -- whether broad or limited free agency, a soft or a hard salary cap -- professional sports have flourished in unprecedented fashion. We all know (and many sports fans and writers lament) how much player salaries have soared over the last twenty years. But so also have owner franchise values. In baseball, for example, a larger market team, the Baltimore Orioles, which was purchased for \$13 million in 1978, was sold for \$173 million in 1993, up 13-fold in fifteen years. A small-market team, the Seattle Mariners, purchased for \$6.5 million in 1977, sold for \$106 million in 1992, up 16 times in just fifteen years. The explanation for both of those

economic trends is the same: fan interest in baseball and other sports has grown phenomenally over the last two decades -- reflected in gate attendance, television viewership, and marketing and endorsement appeal.\*

The first law of labor economics is that the demand for labor is derived from the consumers' demand for the product of that labor. Higher baseball salaries don't produce higher ticket prices; rising ticket prices (and broadcast rights) lead to rising player salaries. The second law is that the best way to see that labor will get its fair share of the value it is producing is assurance of at least some degree of employer market competition for labor's services. Both of these economic laws have been fully corroborated by recent experience in big league sports.

The one conspicuous exception to these economic and legal rules has been the fate of minor league baseball players. A little-noticed feature of the Toolson case is that George Toolson (unlike Curt Flood, for example) was a minor league player, someone whose career advancement had been blocked by being stuck in the farm system of a New York Yankees team that was in the midst of its first-ever five consecutive World Series titles. When Toolson was shuffled off to another team in the Yankee chain, he sued for freedom from the reserve system so that he might have a chance with another big-league

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\* In 1975, total major league baseball revenues were \$160 million; in 1993, the number was approximately \$1.8 billion.

team that had a greater need for his talents -- perhaps the St. Louis Browns who then were performing so poorly on the field and at the gate that they were about to decamp for Baltimore.

Since both the Supreme Court and the Congress refused to address the fate of Toolson and his colleagues, there has been one, and only one, significant change in the minor league reserve system. In 1965, the owners decided to tighten, not to loosen this regime, by instituting the rookie draft. Successors to Toolson no longer had any choice about which major league farm system to sign up with in the first place. And because the Messersmith case involved interpretation of the major league players collective agreement, that arbitral ruling had no impact on the owners' tight control over the pay and prospects of minor league players.

There is only one situation in which minor league players have any possible option and thus any measure of bargaining power. If, like a Brian Taylor in 1992, an Alex Rodriguez in 1993, or a John Booty in 1994, the high school player is selected early in the first round of the June draft, he can use the threat of going to college in the fall to force the drafting team to offer a million dollar plus bonus or lose the benefit of that scarce and valuable draft pick. Even that draftee option remains in force only because in 1993 the Major League Players Association successfully challenged in arbitration the effort by owners to unilaterally rewrite this

draft rule. That means the Association can use this minor league players bargaining chip as an asset to try to extract a better contract deal for its major league members this summer.

Again, the best evidence of the impact of these player restraints comes from the salary numbers. In the early 1950s, when Toolson was decided, Triple A minor leaguers earned roughly one-quarter of what major league players did. In the early 1990s, Triple A players earn\* about one-fortieth the average salary of major league players who are now fortunate enough to negotiate in an environment that offers them some competitive demand for their services. Not only has the current legal status of minor league players enhanced the revenues and franchise values of major league owners, but it has also contributed to the escalation of major league salaries. The vast majority of minor league players never make it to the big leagues. The vast majority of minor leaguers who do have at least "a cup of coffee" in the big leagues never get to the stage of salary arbitration, let alone free agency. The resulting artificially depressed minor league salary rates have helped pay for the \$7 million plus contracts secured by the Barry Bonds's and Frank Thomas's with the help of their players association.

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\* The average Triple A salary is now close to \$30,000 a year. However, that average is distorted somewhat by a few high salaries negotiated in special circumstances. The typical (i.e., median) Triple A player earns approximately \$15,000 a year.

Minor league players are the most immediate, most obvious, victims of the absence of any free market inside baseball. However, major league owners' total control over this talent base for the future of the game has had a number of untoward consequences for minor league owners, communities, and fans. Let me just mention a few that, hopefully, will come up in the hearing.

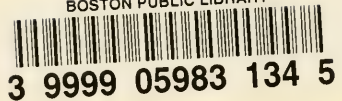
\* During the 1990 negotiations of a new Professional Baseball Agreement (PBA) between the major leagues and minor leagues, the major league owners (through then-Commissioner Fay Vincent) threatened to remove all their players from the minor leagues to secure a better Player Development Contract from the minor league owners. It is a bizarre feature of the current legal regime that major league owners could, in effect, mount a "strike" of their farm system players to improve the owners' balance sheets, rather than the players' own conditions. Exactly that same lever can and will be used by the major leagues in future negotiations for the PBA.

\* At least the minor league owners were present at baseball bargaining table in 1990, and their ultimate sharing of revenues and costs with the major leagues may have been financially justifiable. The communities who host the minor league teams were not privy to those negotiations. However, the PBA imposed on these cities

and towns a set of minimum standards for stadium size and quality that communities have no choice except to meet (with the aid of taxpayer dollars) or lose their teams. The minor league owners did not fight very hard on that issue which is likely to put more money in their pockets as well.

\* The total control that the Player Development Contract gives the major league team over the assignment of minor league players has an unfortunate impact on the quality of the game offered to minor league fans. Imagine if, just before the 1994 NCAA playoffs began, the Milwaukee Bucks had reached in to pluck Glenn Robinson off the Purdue roster, the Dallas Mavericks Jason Kidd from California's, the Detroit Pistons Grant Hill from the Duke Blue Devils. The country would have reacted with horror at such a step. Yet that is precisely what my Boston Red Sox regularly do with their Pawtucket Triple A farm team whenever a member of the big league roster is injured or playing poorly. That owner prerogative may be good for the major league fans and the minor league players. However, it certainly detracts from the appeal, the integrity, of minor league pennant races and playoffs offered to their local fans.

\* A final consequence of the current minor league reserve



system is less obvious. This system helps keep in the minor leagues a number of cities that should be major league -- most obviously Tampa Bay, but also Phoenix, Indianapolis, Buffalo, Sacramento, and so on. One important incentive that the big leagues have to expand and keep up with growing cities and fan interest, is to avoid the threat of a new league competitor. A large obstacle to emergence of such competitors in baseball is the major league owners' contractual control over all the best young prospects -- for a total of up to 13 years in the minor leagues and then in the big leagues.\* Given its current antitrust exemption, major league owners are able to use their total control over this vital playing asset to stifle any challenges to their current monopoly.

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In mentioning these several social and economic problems posed by the antitrust exemption, I don't mean to imply that the solutions are all easy and obvious. (The fact the issues are intricate is the reason why my scholarly colleagues and I write books that, we hope, the parties and the judges will read.) I want to underline, though, that the complexity of sports (like health care, or education, or computer software)

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\* In that sense, baseball owners enjoy much more economic insulation situation than their counterparts in football and basketball, where the minor leagues are the colleges and their graduates can go in either direction.



is not relevant to the question of whether baseball's special antitrust exemption should be repealed. (Nor, I should add, is the presence or absence of an "independent" commissioner.)

The whole point of antitrust law is to foster a free and competitive marketplace in which the parties themselves design (and regularly redesign) innovative solutions to the needs of customers, workers, and investors.\* When Congress and the courts subjected basketball and football to antitrust law, they did not expect to, they did not have to, write the intricate details of the very different salary caps developed within for these two sports. That job can be left to owners negotiating with players, as we will all be reading about in the sports pages this summer. The single issue of economic policy and legal principle posed for the Congress is whether baseball owners should retain their unique prerogative to write the rules of the game themselves. Or should baseball owners, like those in every other sport, or in every other business with that degree of "take it or leave it" market power, have to persuade either the affected parties or a

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\* I expect, for example, that a freer market for young players would still produce multi-year, largely standardized contract commitments that justified the (major or minor league) teams' investments in developing the players' talents. That is exactly what now takes place in the music industry, for example. However, there is considerably greater flexibility and fairness in music contracts because antitrust law does not permit all the music companies to get together and unilaterally set up a draft of budding musicians coming out of high school, with almost all the draftees having no meaningful choice about where, for whom, and on what terms they will play for the next decade.

neutral judge and jury of the reasonableness of their position? Simply asking that question should be enough to answer it.





